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LAND USE POLICY AND PLANNING ASSISTANCE ACT

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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 2

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

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LAND USE POLICY AND PLANNING ASSISTANCE ACT

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Printed for the use of the
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U.S. GOVERNMENT PRINTING OFFICE

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LAND USE POLICY AND PLANNING ASSISTANCE ACT

WEDNESDAY, FEBRUARY 7, 1973

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

The committee met, pursuant to notice, at 10:30 a.m., in room 3110, New Senate Office Building, Hon. Henry M. Jackson, chairman, presiding.

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

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

The CHAIRMAN. The committee will come to order.

The purpose of today's hearing is to take further testimony on S. 268, the Land Use Policy 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, and to improve coordination of Federal and federally assisted activities which have significant land use impacts.

For 3 years now national land use policy legislation has been pending in Congress. This is the third time in three Congresses this committee has considered this legislation. Twice before it has reported national land use policy bills.

The costs of this delay are real. Take an example close to home. The Sunday Washington Post reported that more than 30,000 acres of Maryland farmland are taken out of agriculture production each year for development or to be held by land speculators. This means that 90,000 acres of Maryland farm country alone have been consumed in the 3-year period of consideration and reconsideration of national land use policy legislation.

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. My proposal S. 268, can effect such an improvement.

We are fortunate this morning to have a number of distinguished witnesses. We heard from two Governors yesterday. Today, we have the privilege of receiving testimony from my good neighbor to the south, Gov. Tom McCall, of Oregon.

Before I ask him to proceed, I would like Senator Hatfield to formally present him to the committee.

Senator HATFIELD. Thank you very much, Mr. Chairman.

I wish to express first my appreciation to the chairman for granting our distinguished Governor time to schedule along with Governor Ford, Governor Docking and Governor Love. I ask the chairman to allot us some time to present the experience and the record of Oregon. I thought it would be very helpful to the committee to have this

material and I felt only the Governor could really present it from the most intimate firsthand experience and knowledge because of his leadership in this area of legislation within the State of Oregon.

So, it is an honor not only to have the Governor of our State here, but to look for the kind of presentation I know that would be helpful to the committee as we wrestle with this particular legislation.

I might say for the record that I would like to also welcome at this time Senator Victor Atiyeh from the Oregon State Legislature who will participate in a panel of legislators this afternoon. I take this opportunity to issue this welcome because I happen to be caught in one of those difficult situations and dilemmas where we are marking up the bills relating to keeping these committees functioning over in the Rules Committee, and following the Governor's testimony I am going to have to rush to make a quorum. So, consequently in order to get money for the Interior Committee to continue the hearings and other activities, I am going to have to return to the Rules Committee.

But I am delighted to extend to you, Governor, the warmest welcome, and I am looking forward to both the substance in and eloquence of your delivery, which I am familiar with in the past.

The CHAIRMAN Thank you, Senator.

Governor, we are delighted to have you with us. I know you have a formal statement, you may put it in the record, it looks like you made some notes, and you may want to proceed in your own way.

STATEMENT OF HON. TOM McCALL, GOVERNOR OF THE STATE OF OREGON

Governor McCALL. Thank you very much, Mr. Chairman and members of the committee.

I especially appreciate Senator Hatfield for issuing this invitation, on your suggestion, and having the privilege of being here this morning. I think I will take your advice and submit for inclusion in the record three documents.

The first is entitled "Willamette Valley Mall: A Challenge to Community Planning." It shows how the placement of a single shopping center could determine the pattern of the floor of one of the world's greatest agricultural valleys.

Document No. 2 is a second analysis dealing with one of Oregon's ostensibly desirable luxury developments known as Charbonneau, on the south bank of the Willamette River, midway down on Willamette Valley. This is an interesting analysis because it shows that in formulating this prestigious village for relatively wealthy people to live in, they met every single ordinance, regulation, and every single State law. At the same time it does threaten to set into motion a proliferating sprawl because there is no provision made to handle the control of the land use of the environment. It could set snowballing an action that might devour thousands of acres of Willamette Valley farmland to the south.

Document No. 3 for submission to the record, Mr. Chairman, is my main presentation which is very supportive of S. 268.

The CHAIRMAN. Suppose we put that in first, your formal statement and the other documents will follow immediately thereafter.

Without objection, that will be ordered.

[The prepared statement and additional material submitted by Governor McCall follow:]

State of Oregon
OFFICE OF THE GOVERNOR

February 7, 1973

STATEMENT OF GOVERNOR TOM McCALL IN SUPPORT OF S. 268 BEFORE THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, Washington, D. C.

Mr. Chairman, members of the Committee, I am Tom McCall, Governor of the State of Oregon, and a member of the Citizens' Advisory Committee on Environmental Quality. I appear before you in support of S. 268, the "Land Use Policy and Planning Assistance Act of 1973."

Mr. Chairman, to me there is no single action we can take which will do more for environmental protection and enhancement than land-use planning. This nation and the several states are in dire need of a land-use policy that will permit orderly development and prudent land use based upon the greatest lasting benefits to the public as a whole.

Across this nation today there is a new mood widely expressed and supported by our people in recognizing that land resources are finite. There is a valid public interest in directing growth and development, and in preventing misuse of land and sprawl of suburbia, knowing that unlimited and unregulated growth leads inexorably to a lowered quality of life. With land-use planning, we can protect land values, and we can provide for compatible land uses.

S. 268 is a means to a desirable end. In the absence of an adequate process of land-use planning, and in a void of criteria and guidelines for determining the best use of our land resources, decisions of wide impact upon communities and states are being made in the private sector with little or no regard to consequences. S. 268 starts the process of identifying goals and objectives, and in spelling out the relative areas of responsibility for federal, state, and local government.

Mr. Chairman, in my state of Oregon, land-use planning is the top priority item in our current Legislative Session, ranking with school finance and fiscal matters as the most crucial issue that must be resolved.

Annually, I have staged a Governor's Conservation Congress, focusing attention on a major resource or environmental issue. Last fall, the Governor's Fifth Conservation Congress centered its attention on land use planning. Six hundred fifty concerned Oregon business, civic, industrial, governmental, conservation and educational leaders joined in Portland Thanksgiving week to explore all aspects of the problem. Many of our sister states attended. No better measure of interest and constructive concern can be shown than the fact that on the final day, Thanksgiving eve, more people attended the sessions than on the opening day, Monday.

I came away from that Congress convinced that a majority of our citizens are determined to support land-use

planning, for they recognize the inherent plusses in the planning process, and the unconscionable losses society in total will suffer without planning. It ensures protection of prime agricultural soils, a critical necessity not only in Oregon, but across this entire land. It provides for open space, and it is the one tool that guarantees a future for activities and industry tied to the soil.

Land-use planning can protect the land base which agriculture must have, as well as forestry and other activities. It provides the opportunity to lift the increasing burden of people pressures on the fragile coastal zone, and on areas presently taxed to the hilt in metropolitan centers, in order that growth and development may be diverted to where it is needed.

Land-use planning gives us an opportunity and a process to steer away from strip-city ugliness, to maintain the integrity of our cities, and to cut down on the enormous social costs brought by suburban sprawl and core disintegration.

Mr. Chairman, S. 268 supports a process whereby we can integrate transportation, energy, education, industry, water and sewer systems into a total plan so as a society we are ahead of expansion and development, guiding it in a way to benefit us all, rather than desperately trying to provide services needed by growth for which there was no planning.

I am pleased to note that a substantial majority of Governors, the National Governors' Conference, the National Association of Counties, the League of Cities, the Conference of Mayors, all of our major conservation organizations, and significant groups of users of the land in agriculture, forestry, and water resources are endorsing S. 268. Land-use policy legislation has been identified as a critical need by the Citizens' Advisory Committee on Environmental Quality, the Laurance Rockefeller committee on which I am pleased to serve.

Mr. Chairman, in the present Oregon Legislature, consideration is underway on our Senate Bill 100, and this Committee will be interested in knowing that our legislation incorporates important aspects of your bill. It speaks to areas and activities of critical environmental concern, it establishes a time frame for establishing criteria and guidelines by local government planning commissions so a consistency is achieved between cities and counties, regions and the state. It provides for goals and objectives set by the state for the areas and activities of critical environmental concern, and sets a permit system for securing those goals.

S. 268 is of great importance in meeting land-use problems in our state. Over 53 percent of Oregon is in federal ownership, and it is essential to orderly land-use

planning that federal land management agencies be part of the process] and the effort S. 268 provides for coordination of activities of federal agencies with the state land-use plan, and will keep management of federal lands compatible with management of adjacent non-federal lands.

Mr. Chairman, I know the members of this Committee and the Congress are painfully aware of the fiscal problems of the states, now additionally compounded by the withdrawal of appropriated funds from on-going programs by action of the Executive. I am aware that the Congress is concerned that Congressional prerogatives are being threatened by such actions. S. 268 again holds the promise of federal funding of state efforts to develop their planning process under the federal guidelines. I cannot urge too strongly that funding be secure under this Act.

I am pleased to see that advisory members are provided to the National Advisory Board on Land Use Policy, and that representatives from state and local government are among those who will serve. I also like the requirement for a state advisory council from officials of local governments. There is no question in my mind that the planning process must start at the local government level, and with wide citizen input if it is to be soundly based and successful in implementation.

I would hope that upon passage of this Act, the Secretary of Interior would establish Ad Hoc Federal-State

Joint Committees to look to specific problems relating to jurisdictional conflicts between planning and management of federal lands and adjacent non-federal lands. Under the Act, also, the Secretary would establish such a Committee upon request of a Governor. As a Governor, I would make such a request.

I appreciate the fact that this Act faces squarely the issue of potential loss to property owners because use of land may be restricted by land-use planning.

A review of court actions shows the issue to be far from clear, and the outcome of litigation cannot be predicted with any certainty. [It appears in some cases that the paramount right of the public is surfacing, and the courts seem to be saying that the state has a right to restrict the use to be made by an owner of land when the restrictions are developed in an orderly process, and are balanced against the potential harm to the community.] Needless to say, however, there is a notable lack of any real coherent pattern in the decisions.

The legislation in Oregon, Senate Bill 100, patterned to a substantial degree after S. 268, came about through a citizen committee headed by State Senator Hector Macpherson. Early in their investigation of land-use problems they concluded that the state needed to furnish both the policy to guide local decisions, and the guidelines for plans to carry

out that policy.

In our coastal region, the committee observed rampant development in environmentally-fragile areas. In Lincoln County, I have imposed a moratorium on any further building, connecting to water systems, or installation of sub-surface sewage, pending development of comprehensive water and sewage treatment plans. A study which I implemented late in 1972 showed 41 subdivisions with 1,005 lots platted in that county in a two-year period, and 562 of those lots were unsuitable for septic tanks because of lot size, topography, soil, high water table, or adverse slopes, but developers were planning just such installations. Of 60 water systems surveyed, 39 were found to be out of compliance with law as proper and safe sources for drinking water.

A state-wide survey, evaluating 356 subdivisions involving 16,850 parcels of land, covering nearly 100,000 acres, developed the fact that nearly 25 percent were inadequate for any sewage handling short of central systems, but such an approach was not planned, and the rampaging, competitive development spiral continues, with irreversible damage being done.

There is a hopeless inadequacy in subdivision ordinances. Cities were found to be planning intensive development on slide faults; counties were encouraging growth on flood plains. Planning was underway by cities without reference to how the plans might impact adjacent areas.

There exists a very real danger that uncontrolled development will clear-cut Oregon of its livability.

There is no question that time is critical, and decisions can be made now to change what has been an inexorable pattern of growth for growth's sake, with no thought of tomorrow. Oregon needs S. 268 together with its Senate Bill 100 not only to insure a tomorrow, but to restore today.

Mr. Chairman, I am placing with the Committee sets of two documents, the story of Charbonneau in Oregon's Willamette Valley, south of Portland; and the story of Albany's proposed shopping mall. Charbonneau is a new city development, on prime agricultural land, with extensive planning to make it an outstanding example of quality construction, design, and layout, but still placed where it is simply because the land was available. There was no planning to keep it from happening, nor any planning to prevent its development, or to support its validity. And with all of its quality and sizable investment, there is no land-use planning to protect it from non-compatible, honky-tonk development which might spring up, and which would quickly erode values and investments.

I protested and questioned the development, and the developers were furious. But I am certain they will be the first to demand protection by land-use planning of any actions which are not compatible with their development.

Such is the case in so many instances. Prior to 1969, Oregon had no law requiring land-use planning and zoning of any kind. Lake County, in the south-central part of the state, was resisting with pioneer independence any actions which would restrict the individual's right to use of his property as he saw fit. An enterprising businessman from Portland went into the county, purchased in fee some 5,300 acres of land near what is called Alkalai Lake, and started to move for storage and ultimate disposal thousands of gallons of highly-toxic chemical wastes.

There was no land use plan to prevent it, nor any zoning to stop it. But Lake County now has a land-use plan, and the concept is pretty widely upheld by the neighbors who have suddenly seen the reason for wise planning of land-use, and that such planning protects their property values, even though it brings restrictions.

Harney County, in the southeastern corner of Oregon, was also free from such liberal nonsense as land-use planning, until a site for disposal and storage of radioactive wastes was imminent, and now their county planning commission is alive and active.

Albany, Oregon is county seat for Linn County, one of our strong agricultural counties in the Willamette Valley. It lies on I-5, the north-south freeway. It is just 10 miles from Corvallis, which is the home of Oregon

State University. It is the trading hub for a sizable population. Developers came to Albany seeking the establishment of a large regional shopping center. The land they first optioned was, however, a full nine miles down the freeway from Albany, at the intersection with state highway 34. It was zoned agricultural. Sewer systems and water service would need to be extended. There was no plan to accommodate the traffic such a development would generate. Costs to fire districts, and total social costs involved in providing services were far in excess of potential tax revenues, plus the fact that such a multi-million dollar, 600,000 square foot complex would inevitably erode the core business area of Albany, and additionally attract to its environs more and more development, none of which was planned.

The report spells out in cold factual detail the undesirable impact. The result has been a happy one. The development will come, instead, on land at the old Albany city airport which is outdated, which the city wants to see put to such a use, which is in the city limits, already served by sewers and water and adequate traffic patterns. Occupancy of that land by the complex will provide funds for the city to relocate its airport to a site planned for in the comprehensive land-use plan.

Mr. Chairman, it boils down to the fact that we're going to have more people living in our country, in your state, in my state, in our cities. They're going to need more of

everything; houses, highways, schools, parks; and we're going to have to provide them with their needs. But there's one thing we can't provide more of -- and that's land. A lot of planning has been done, but we've not had a system for deciding what's right and what's wrong, what's good and what's bad. S. 268 starts the process to develop that system.

I urge its speedy enactment, backed by reliable funding, and implemented with determination. If so, we'll not leave our children a legacy of chaos. We'll avoid the chain-letter economy that David Brower spoke of when we of today pick up the early handsome return, and those of tomorrow find the mailbox empty. Let us resolve that our land will no longer suffer from mishandling by those with the buffalo-hunter mentality.

It's time we stop ignoring the problem, and stop talking around it. Let's make this a common cause, so we can enjoy rather than endure, our quality of life.

"WILLAMETTE VALLEY MALL"

A CHALLENGE TO COMMUNITY PLANNING

January 17, 1973

Local Government Relations Division
Executive Department

"Willamette Valley Mall"

A CHALLENGE TO COMMUNITY PLANNING

About a year ago, announcements were made through Oregon's news media of a new multi-million dollar regional shopping center to rise in the heart of the Willamette Valley's farmlands, just south of Albany.

The developers, a group called Mall Centers Inc. of Seattle, Washington, painted an exciting picture of futuristic center with 650,000 square feet of floor space - a mammoth complex covering over 100 acres and costing an initial $20 million. But somewhat to the developers' surprise, serious questions were raised about the proposed location at the intersection of Interstate 5 and Highway 34. The quick approval they expected did not materialize. City and county officials, planners, editorial writers and individual citizens expressed several doubts about the whole idea.

These doubts were not diminished when the proposed site was shifted to the intersection of Highways 99E and 34.

The central issue was the conflict with the recently completed and adopted county comprehensive land use plan. Linn County, and in essence all of Oregon, were faced with a critical question: once the citizens and planners of a county have spent the time and effort to create a land use plan, should the pressure of commercial development, however formidable, be permitted to reduce that plan to shambles?

Many people, of course, feel Linn County's plan should be changed - that a regional shopping center is an overriding need, regardless of where it is placed. Others feel, however, that once the citizens "draw the line," it should be held - that the entire land use plan of Linn County would be a mockery if the developers were allowed to proceed.

This report examines, therefore, some of the impact of the proposed regional shopping center on the urban and rural development in Linn and Benton Counties.

Background

Early in 1972, the Linn County Planning Commission was approached by the real estate firm of Ransom and Smith, representatives of Mall Centers Incorporated. The developers were seeking Commission approval of a zone change of 100 acres they planned to purchase at the intersection of I-5 and Highway 34. This land was designated "Exclusive Farm Use" at the time.

Mall Centers Inc. also approached the Albany City Council

and City Planning Commission with a request for sewer services to the new site. Since the site was five miles south of Albany, the Council and Commission treated it as a "special request."

In subsequent hearings, several concerns were voiced. We quote from staff comments at Commission meetings:

"...that uncontrolled 'urban sprawl' will be generated in the areas between the present City limits and the location of a regional shopping center"

"...that the City will not be able to provide necessary services to all the unorderly growth areas generated by the undesirable location of a regional shopping center"

"...that there will be further deterioration of the Central Business District and retail Commercial base."

At the same time, several voices were raised in favor of the shopping center. They commented that unless the Commission allowed Albany to grow, the city would "stagnate." The developers pointed out that between $15 million and $20 million were spent annually by Linn and Benton County residents outside of the two-county area in retail shopping. A regional shopping center serving Lebanon, Corvallis, Albany, North Albany, Sweet Home, Philomath, Jefferson, Scio, Brownsville, Harrisburg, and Monroe would allow people to spend their dollars "at home." They said they anticipated 1,200 new jobs when the center came into full operation.

In June, after two months of deliberations, the Albany City Council moved unanimously to "approve in concept" Mall Centers' special request for sewer services. They refused, however, to take further action until possible conflicts with the Linn County Comprehensive Plan were reconciled.

Meanwhile, by late March 1972, the Linn County Comprehensive Plan was adopted and published.

This slim 28-page document is remarkable for its clarity and brevity. It stresses that "Linn County is not yet faced with the severe problems of congestion, air pollution, water pollution and civil strife plaguing many of the more highly urbanized areas of the nation." It declares as its purpose "to foresee and forestall future problems and to envision, promote and encourage development of communities in harmony with the natural environment." The plan, although rurally oriented, allows for significant industrial and commercial development within and around present urban areas.

In the summer months of 1972, the developers (Mall Centers) retained the planning and engineering consulting firm of Cornell, Howland, Hayes and Merryfield (CH2M). The consultants advised Mall Centers of several specific conflicts with the new Linn County Comprehensive Plan. They recommended that

Mall Centers approach Linn County, the Oregon Department of Environmental Quality, the Oregon Executive Department and other governmental bodies for a joint "study" of the need for a regional shopping center. Premising their plans on fast intergovernmental approval, CH2M advised the developers to seek a specific "amendment" to the Linn County Comprehensive Plan.

The "favorable atmosphere" never materialized. After a series of conferences, Mall Centers decided NOT to present their original site (at I-5 and Highway 34) to the Linn County Planning Commission. They began directing their efforts to finding an alternate site.

Present Site Proposal (Highways 99E and 34)

In November 1972, a new site was selected by Mall Centers - a 140-acre parcel in the southwest quadrant of the intersection of Highways 99E and 34, about 2.5 miles west of the I-5 site. This parcel is planned and zoned by Linn County as "Exclusive Farm Use" just as the previous site was. A more complete physical description follows:

Soils

The land proposed for the new shopping center is essentially flat. Although the soils are designated Class III, they are highly productive for grass seeds.

Geology

The most recent geologic map of the area dates back to 1953. At the present time, sand and gravel deposits in the area, if any, are unknown.

Flood Plain

The site is on the flood plain of the Calapooya River. The State Geologist says that little or no threat is posed from the Calapooya, even at full flood. The site is thirty feet above the Willamette River flood plain.

Nature of the Surrounding Area

The area surrounding the site is devoted almost exclusively to farming. Some light industry and commercial development is located to the immediate north and northeast near the highway intersection, though agricultural land predominates beyond the highway frontage. The largest concentration of development consists of the Linn Benton Community College about two miles north - and residential subdivisions just north of the college.

Immediate Area Population

According to 1970 U.S. Census data, 1,012 people live in Enumeration District 37, a 12½ square mile area bounded by I-5 to the east, Oakville Road to the west, Highway 34 to the south and the city limits of Albany to the north.

Proximity to Other Urban Areas

The community of Tangent is about one mile south of the site. The Albany business district is 5 miles away and the Albany city limits are 3½ miles away. The new center would be 7½ miles from Corvallis and 10 miles from Lebanon.

Water Services

Water services will have to be supplied to the center by contract with a private water company, Pacific Power and Light. The water main would require a 12,000 foot extension from Linn-Benton Community College. The line would have to be 12 inches in diameter to supply adequate water supplies to the center for fire protection. If the line is not installed, fire officials estimate that a 1 million gallon reservoir would have to be supplied for emergency needs of the center.

Fire Protection

The proposed site is in the rural fire district of Tangent which has, at present, three 1,000-gallon fire trucks. The Oregon Fire Rating Bureau has given Tangent a grade of "9" on a scale of 10 ("1" being the highest and "10" being the lowest). The new center would require either: (1) two to three additional 1,000-gallon trucks as well as additional hose and a full modernized fire station for the fire district; or (2) the installment of a 2,000 gallon per minute sprinkler system in the center itself.

The Challenge

Linn County today is a pleasant rural area, blessed with some of the richest farmland and recreation land in the Pacific Northwest. "Residents and visitors," according to its Comprehensive Plan, "are still able to enjoy the natural beauty and tranquility of mountain and valley and at the same time be only hours from the major cities of the Pacific Northwest."

The citizen planners of Linn County envision the future

growth of urban areas, but have stated "...there is no justification to further reduce the productive land set aside for general agricultural use."

All this has been challenged by the proposed "Willamette Valley Mall." Mall Centers Inc. is considered a responsible and established development firm. Leasing and management of the center will be handled by the Albany firm of Ransom and Smith. National account leasing will be handled by Coldwell, Banker and Company of Los Angeles.

The developers have been extremely forthright in their proposals. While they recognize the desire of Mid-Willamette Valley residents to maintain the relaxed pastoral character of their open space, they also emphasize the need for a regional shopping center in the area. In the Developer's Preamble and Market Study, they point to: "a true and present need for modern mall facilities to serve a population substantially over 100,000 persons not now enjoying the convenience of such a facility."

They are categorically opposed to placing such a center within a city:

> "The heart of the matter is that the whole rationale of developing modern mall facilities in older core areas is obsolescent...Regional centers universally across the nation are developed at or near freeway interchanges for ready access to all segments of a given region without entanglement in core area traffic congestion."

Moreover, Mall Centers maintains, the proposed center "will not be acceptable to the major national concerns desiring occupancy herein if located in a city or township core area."

Nevertheless, the developers' proposal, according to Linn County officials, is "totally inconsistent with the philosophy of the Comprehensive Plan." The following quotations from that plan serve to point out the basic conflict. The plan seeks to:

1. "Discourage the establishment of commercial development in the unincorporated areas other than small convenience facilities such as grocery stores and gas stations. To further encourage that such facilities be located in compact centers and prevent them stringing out endlessly along major and secondary traffic arteries."

The planners recognize that intensive development of any kind requires a full range of urban services such as water, sewer, storm drainage systems, and police and fire protection. They feel these services can best be provided by a city.

To counter this objection, the developers have offered to make an "equivalent tax" payment of $132,600 per annum to the City of Albany hoping that they will one day be annexed by the city. However, in the meantime, all services, except for sewer, will have to be provided by Linn County or special service districts.

Linn County will receive an estimated tax revenue of $31,800 from the shopping center. This does not begin to pay the bill for services the county will have to provide for the "Willamette Valley Mall." The additional burden will presumably be borne by county taxpayers.

Special service districts will also be under a strain to provide services. In the case of fire protection, the local Tangent fire district is the obvious candidate. At present, only minimal protection can be offered despite an anticipated tax revenue of $22,400 per annum from the shopping center.

2. "Preserve and improve the traditional community shopping centers of the existing county towns, recognizing that they are a vital part of the community's continuing economic health and livability."

This goal is a positive statement as to where Linn County seeks future development. The existing cities of Lebanon and Albany and Corvallis in Benton County have a huge public investment in terms of streets, sewers, schools, water lines - an investment that has already been made.

3. "Recognize prime and general agricultural lands of the valley floor as an irreplaceable natural resource and protect them as a basic element of the economy."

4. "Protect agricultural areas from the intrusion of noncompatible land use."

5. "Encourage retention of agricultural land in farm and open space uses until clearly needed for other purposes."

Of course it is hard to prophesy what the long-range effect the Willamette Valley Mall will have on surrounding agricultural areas. Traffic congestion can be expected to increase around the 34-99E intersection and between Albany and Tangent until highway improvements are made - at general public expense. There will be further pressure for apartment, industrial and commercial development especially along any new sewer-water service corridor. It can be expected that there will be pressure for further extension of sewer facilities to Tangent with a subsequent increase in residential subdivision south and southwest of the shopping center on what is basically farmland. As a major growth generator, the "Willamette Valley Mall" will inevitably force up surrounding land

values, creating new pressures to take farmlands out of agricultural use.

6. "Develop a circulation system to provide for the safe, rapid and convenient movement of people and goods within and through the region."

7. "Provide for the separation of through and local traffic to facilitate movement within the region and its urbanized area."

The Planning Commission has consistently attempted to keep Highway 34 free from commercial and industrial strip development which would impair the high-speed traffic capability between Corvallis and I-5; and also Highway 99E which still serves as a major service link to the small settlements lying between Albany and Harrisburg. The State Highway Division while diplomatically noncommittal about the project proposal, has noted "...that shopping centers in the immediate vicinity of highways affect the utility of the highway."

8. "Coordinate development in urban areas with existing or planned sewer and water lines."

9. "Encourage that trunk lines be installed in advance, or at the time of development, in urbanizing areas in accordance with a general plan and established priorities for the municipality in question."

City and county comprehensive plans both show Albany city sewer lines ending at a southerly boundary approximately halfway to Highway 34. From an engineering standpoint, according to city officials, the sewer trunk lines are probably large enough and deep enough to go to Halsey or perhaps Harrisburg. However, Linn County citizen planners are resolutely opposed to the growth of "linear urban sprawl" along a water-sewer corridor. To quote them again:

10. "Encourage orderly residential development outward from existing urban areas, recognizing the need for extension of public utilities such as water, sewer, gas, electricity, public streets and other services and facilities and avoid 'leapfrog development'."

11. "Maintain low densities in rural areas where the necessary services are not available, keeping in mind the particular vulnerability of rural school districts to sudden enrollment increases."

The initial "Willamette Valley Mall" development would require the extension of some of the basic sewer and water services

two miles into an undeveloped rural area. Sporadic offshoots could be expected one mile either side of major trunk facilities, theoretically opening up to development an area of approximately eight square miles. This potential growth area is larger than the present incorporated area of Albany!

In the past, this type of rampant growth on the fringe of a city has caused a premature decline in the use of existing city services - a hidden but very expensive cost to the taxpayers.

12. "Provide for a hierarchy of commercial centers, ranging from regional center to neighborhood service centers."

Mall Centers have contended that there is no provision for regional shopping centers in the county comprehensive plan. As can be seen from (12) above, there is such a provision. The City of Albany has actually offered the City Airport situated close in to Albany as a site for the shopping center. However, this has been refused.

The Hidden Costs

There is no way adequately to measure the total cost of a Willamette Valley Mall to the taxpayers of Linn and Benton Counties.

The center has promised to pay the major costs of the urban services it will require. However, when completed, the "Willamette Valley Mall" will be three times larger than the total area devoted to similar activities in downtown Albany (650,000 sq. ft. as opposed to 180,000 sq. ft.). The scale of the center could not help but change the character of people's shopping habits - drawing them away from the established business districts of the Mid-Willamette Valley.

According to the Linn County Planning Commission, this would have an adverse impact "not only on the efforts to redevelop the downtown core but the remaining commercial areas of Albany and other commercial areas in Corvallis, Lebanon, Sweet Home, Philomath and Brownsville. How great an impact is unknown at this time..."

Coos Bay, Oregon has spent about $5,450,000 of federal and local funds in mall construction and urban renewal in order to recover business lost to Pony Village, a nearby shopping center with 200,000 square feet of retail area.

The City of Eugene has experienced a similar deterioration of the central business district because of the construction of the Valley River Center on the outskirts of the city. The city has recently spent $31 million federal and local dollars in downtown renewal. Who knows what the new shopping center will cost

Albany, Lebanon and Corvallis.

Summary

This report gives a cursory look at the proposed construction of the "Willamette Valley Mall" at the intersection of Highways 34 and 99E. It is not intended to be an exhaustive or conclusive review; yet, it covers many of the important issues raised so far.

In general, there seems to be few objections to the basic concept of a new multi-million dollar regional shopping center for the Mid-Willamette Valley. Even the citizen planners of Linn County have provided for such a development.

There are strong objections, however, to the two locations that Mall Centers, Inc. has proposed for building their $20 million 100-acre "Willamette Valley Mall." Planners say the proposed construction at the 34-99E highway intersection would be "totally inconsistent with the philosophy of the Comprehensive Plan."

Mall Centers explicitly wants to build away from cities and "core area traffic congestion." They have said that their major tenants will not accept any location other than: (a) a site close to major freeways and access roads and; (b) removed from older core areas.

The Linn County Comprehensive Plan, however, states very explicitly "that any intensive development requiring a full complement of urban services should be located in or adjacent to cities." Core areas are in themselves not sacred, but in most cases facilities for large-scale development are available. Decentralized growth most often duplicates citizen costs.

On this issue, and on twelve other points, the proposed shopping center is in the clearest violation of the just-adopted Comprehensive Plan.

Again and again the Plan stresses the principle of keeping cities and surrounding countryside cleanly separated, to prevent developments from "stringing out endlessly along major and secondary traffic arteries." Yet as a major growth generator, the center will inevitably create pressures for new urban growth in the surrounding area.

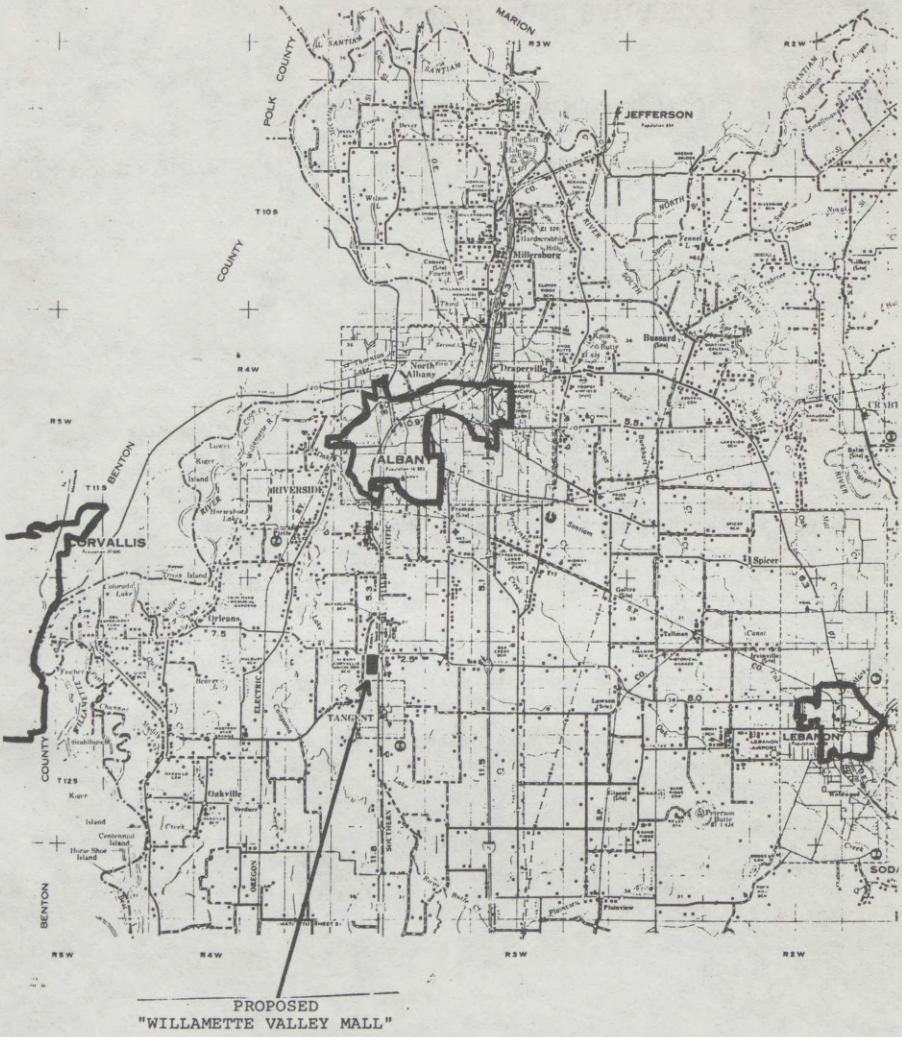
Finally, the "Willamette Valley Mall" poses a definite threat to downtown commercial districts as retail establishments migrate to the new "hub" of activity. Highway planners are concerned about traffic congestion on Highway 34, while Albany city planners predict much urban "infill" between the center and city limits.

In general, the proposed shopping center appears to be located in the wrong place at the wrong time.

Recommendation

Obviously the issue is not merely a topical decision of where to place a shopping center. The development of the entire Willamette Valley floor could well depend on this decision and others like it in the years ahead.

Therefore, it is recommended that an unbiased study be commissioned to determine the proper location for the "Willamette Valley Mall," and to weigh environmental as well as economic factors. It is strongly recommended that all parties concerned - the counties of Linn and Benton, the cities of Albany, Corvallis, Lebanon and Sweet Home, the Oregon District 4 Council of Governments, and State of Oregon, together with the developers - be a party to this study and research effort and reach a joint conclusion on siting before any construction is initiated or any zoning change is contemplated.


MARION
POLK COUNTY
BENTON COUNTY
JEFFERSON
Millersburg
Draperville
North Albany
ALBANY
RIVERSIDE
CORVALLIS
Orleans
TANGENT
Oakville
LEBANON
Spicer
Bussard
Plainview
R5W
R4W
R3W
R2W
T10S
T11S
T12S
PROPOSED
"WILLAMETTE VALLEY MALL"

EXECUTIVE DEPARTMENT

LOCAL GOVERNMENT RELATIONS DIVISION

240 COTTAGE STREET S.E. • • • • SALEM, OREGON 97310

TOM McCALL
GOVERNOR

CLEIGHTON PENWELL
Director

October 12, 1971

Attached you will find a copy of a summary report of the impact of the Charbonneau development located south of Wilsonville on the Willamette River. This report was prepared by the Intergovernmental Task Force developing the Willamette Valley Environmental and Protection Plan. In the interest of developing this report quickly, the facts gathered came primarily from affected state agencies. Neither the developer nor local governments were contacted.

As the report indicates, there are several concerns generated by this development. However, it is emphasized that the developers have "followed all the rules" and propose a high quality development.

This report is being sent to you as an example of why we need to develop an intergovernmental environmental planning process and a Willamette Valley Plan.

If you should have questions, please do not hesitate calling on us.

Sincerely,

Robert K. Logan
Administrator

RKL:nm

Enclosure

"CHARBONNEAU"

AN INTERGOVERNMENTAL ENVIRONMENTAL PLANNING SCENARIO

The following has been developed to crystallize the elements of Intergovernmental Environmental Planning. From information gathered, the proposed development will probably have a massive impact on the surrounding area and should accelerate residential and commercial development in this portion of the Willamette Valley. It should be noted that the developers of Charbonneau have followed "all of the rules", and propose a high quality development.

The Charbonneau project demonstrates conclusively the existence of a vacuum in developmental decisions. Most of the state and local government agencies, listed in the appendix, had the opportunity to review, comment, and sometimes regulate, but each had only a single focus. The lack of a systematic process for integrating governmental rules and regulations and resolving potential conflicts among local, state and federal agencies is apparent. An in-depth study of the impact of this project is non-existent. At present, no agency has the obligation to focus upon the "Big Picture" issues, let alone the responsibility for putting the various facts together to represent an intergovernmental point of view. The system hasn't failed; there is no system.

I. BACKGROUND OF PROJECT

Development

The proposed Charbonneau Subdivision comprises 477 acres located south of the Willamette River, east of I-5, and was recently annexed to the City of Wilsonville. Before annexation, Wilsonville was located wholly north of the Willamette River. This project is the only territory within Wilsonville south of the river. The two parts of Wilsonville are linked together by the I-5 freeway through the use of secondary roads.

The proposed subdivision is envisioned as a self-contained facility including a village center, churches, stores, professional offices, elementary school, restaurant, golf course, swimming pool, tennis court, and 2000 residences in the $30,000 to $45,000 price range. The theme of the project is centered around the recreational advantages offered by the 3/4 of a mile frontage along the Willamette River, golf, boating and other leisure activities. The project would be constructed in nine phases with the initial phase consisting of 100 units to be completed by mid-1972.

Total investment would be in excess of $100,000,000 with an eventual population of approximately 5,000. Using a traditional multiplier ratio, the $100,000,000 investment in this project could result in a $500,000,000 total economic impact.

This impact does not include the economic effects of the probable development of the surrounding area into light industrial and service components, nor the probable increase of land values in the area.

II. PHYSICAL SITE CHARACTERISTICS

Soils

The Class II soils on the project site border on Class I types. These prime soils are highly suitable for cropland and have few limitations with the exception of some susceptibility to erosion. They are very deep loamy soils of type 1a (Chehalis-Newberg) and some type 2a (Woodburn-Amity). Climatically, the area experiences 35-45 inches of annual rainfall and 200-215 freeze-free days.

The Willamette Valley has 1,395,000 acres of Class I and II soils. Urban and developmental activities have already withdrawn an estimated 341,000 acres or 24% from agricultural uses.

Geology

There are no sand and gravel deposits on the project site.

Flood Plain

The project site sits high and dry except for a small portion on the northeast property line.

Nature of Surrounding Area

The area surrounding the site is mostly active farmland. A state airport (Aurora) is two miles south, a rebuilt freeway interchange borders the west property line and the OSU Agriculture Experiment Station is immediately to the south. The general pattern of farm use in the surrounding area reflects the availability of the rich soils.

Proximity to Other Urban Areas

17 miles from Portland
30 miles from Salem
6 miles from Canby
12 miles from Oregon City

III. GOVERNMENTAL SERVICES

Schools

The project site is now located in the Canby elementary and Union High Districts. North of the river, the balance of the City of Wilsonville is in the West Linn School District. The developers have indicated a desire to annex their property to the West Linn School District. A site within the project has been provided for a proposed elementary school. Elementary schools are now located in Canby and across the river in Wilsonville. High schools are located at Canby, North Marion and at West Linn. A new high school is proposed in the northwest part of Wilsonville.

If the 750 students anticipated from this development were to attend school in the Canby Elementary and High School Districts $590,000 more in operating costs could be expected based on the anticipated 1971-72 rate of $660 per elementary student and $1040 per high school student.

If the developers successfully annex the project to West Linn, a unified Elementary/High School District, the estimated operating cost to the district for educating the same number of students would rise to an estimated $825,000 based on 1971-72 average costs of $1100 per student.

Additional classrooms would have to be built regardless of which district the site is in at a 1971 state average of $2,400 per elementary and $3,500 per high school student.

Due to unusually high values in the development, revenues expected from the completed project, based on current levy rates of either school district, are estimated to cover present-day operating costs. Classroom construction, likely needed before project completion, may require a district-wide bond election and a corresponding levy increase.

Telephone Service

The project site is a part of the Aurora Telephone Company service area while Wilsonville is served by General Telephone. A jurisdictional problem may develop.

Fire Protection Company

The property is presently without fire protection but is proposed to be annexed to the Tualatin Rural Fire Protection District. A fire sub-station is at Wilsonville with main fire station at Tualatin.

Water

Domestic water is proposed to be provided by the City of Wilsonville. From information received, it appears that the City's current supply is not sufficient but adequate ground water appears to be available in the area to fulfill future demands. There will probably be a need to incur bonded indebtedness to expand the water system.

Sewers

Sewer service to the project site will be provided by the City of Wilsonville. At present, the City is constructing a sewer treatment plant proposed to be phased out upon construction of a larger regional sewer plant. The plant under construction is designed to serve a population of 5,000 for a 10-year period. The state is providing a grant of $231,900 and a loan for $541,100 to the City of Wilsonville for the construction of this interim facility. Indications are that the Charbonneau Development will significantly shorten the design life of the new treatment plant.

Highways

I-5 has recently been expanded and the interchange rebuilt. Sufficient capacity is available for increased traffic from this project. Access to the property is from Eilers Road, a relatively narrow county road.

Mass Transit

The area is in the Tri-met district but is not in the Tri-met service area.

Airports

A state airport (Aurora) is located two miles due south of the project site, with a 4000' runway oriented north-south. The facility now handles general aviation traffic which has been increasing.

Eventually, the airport could serve an ever-greater role by serving as a "reliever" airport for Portland International Airport. To do so, long-range plans would call for the addition of a longer, parallel runway.

Aircraft approach and departure altitudes above the project site will undoubtedly be a source of concern and aircraft noise a potential source of irritation to Charbonneau residents, particularly if a longer, parallel runway is constructed.

IV. CONCERNS

The preceding material has been factually presented to show the obvious impact on natural resources, economic and transportation systems. The following are concerns expressed by agencies contacted and interpretations made of supplied information.

Soils

There is no way to evaluate the loss of these 477 prime agricultural acres in terms of the long-range needs of the valley's agricultural industry. Nor has the role of agriculture as open space been evaluated in terms of the valley residents' need for such under-developed space. It is obvious, though, that this is a loss of nonrenewable, irreplaceable natural resources.

Sewer Facilities

The construction of this project creates a potential lien on state funds for the construction of regional sewer facilities and further places the state in the position of subsidizing the development.

Geology

A potential slide area exists adjacent to the bluff along the river. No structures should be built within 200 feet of the bank edge. However, the project renderings show structures to the water's edge, apparently in conflict with the slide hazard and an agreement noted below.

OSU Agricultural Experiment Station

Experiments at the adjacent OSU Agricultural Experiment Station may be jeopardized by greater numbers of people living nearby. In addition, Charbonneau will likely encourage other nearby housing developments further intensifying the built-in conflicts between farming and high density living.

Parks and Recreation

The entire riverfront will remain in a natural state per agreement between the City of Wilsonville and developers. However, public use or access is unlikely. The proposed development could destroy the potential for public foot or bicycle trails on river frontage between the proposed state park at the mouth of the Molalla River and Champoeg Park.

Navigation

At present, river frontage adjacent to property is being used as a log raft moorage. This could be in conflict with increased boating activity.

Schools

Experience shows that generally, most subdivisions generate about 100 students per 100 families. In this instance, because of the family characteristics of the upper middle income residents in the subdivision, fewer students per residential units are anticipated. Assuming a low of 25-35 students per 100 families, 25-30 new classrooms will have to be provided in the next 10 years.

It appears that considerable time and effort will have to be spent by at least 3 school districts, Clackamas County IED, the county assessor, and the developer in sorting out the political and jurisdictional issues involved in a city with 3 school districts and an announced preference by the developer for one of them.

Effect on Property Values

Experience shows that new subdivision development increases the market value of property in the surrounding area. Higher value developments such as Charbonneau have a proportionately greater influence on nearby farm property land values. The resulting increase in taxes from the increased land values accelerates the already burdensome economic pressures put on farming. Clearly, if Charbonneau is a success, adjacent farm lands will be sold to other developers hoping to capitalize on the high quality image this development projects. Yet the adjacent Class I & II soils are the soils most capable of being self-supporting open space. The typical pattern, however, will be accelerated urbanization once the pattern has been started. In fact, the ripple effect "washing" outward from this development can almost be predicted.

Highways

Interstate Highway Five has been designed as a high-speed intercity facility. The Charbonneau development will create a demand for I-5 to be also used as a local road connecting the two parts of Wilsonville and will necessitate the mingling of slower moving vehicles with high speed traffic.

Airport

Increased development activity may create pressures for higher levels of airport capability including the addition of a parallel runway which can be instrumented. The present runway cannot be instrumented. An additional instrumented runway would require additional land and would need an approach zone whose minimum height would be 195' above this development as contrasted to the 246' minimum approach altitude to the present runway.

Past experience indicates that increases in aircraft movements with the resulting increase in noise levels, generates considerable opposition to the existence of the airport, not to mention the expansion of the airport into a higher capacity, all weather facility.

Real Estate Commission

Early in the investigation, a contact was made to the Real Estate Commission to review the Charbonneau plot plan. No records on the proposed project were available since the statutes do not require filing until initiation of sales.

V. CONCLUSION

The Charbonneau development was not singled out because it is unusual, or that the developers have failed in some way to "follow the rules." Quite the contrary, this development was picked because of its size. It's big and it has an impact; and the impact ripples far and wide.

For every Charbonneau, there is probably two dozen other developments underway now, only differing in size and investment, between Wilsonville and Portland or in and around Portland, Eugene, Salem, Albany and Corvallis.

With the possible exception of failing to contact the State Board of Aeronautics, the developers have worked with the numerous governments and agencies directly affected; and, as stated before, its a high quality development.

Charbonneau was briefly examined because it represents one more step towards complete urbanization of the Willamette Valley. The issues loom larger than the individual concerns of state agencies and local governments. Yet, these individual concerns, the loss of agricultural land, the impact the project has on schools, highways, the state airport are the only programs measurable in this and similar projects. Local city or county plans, or the plans of individual state agencies simply offer no help to either the subdivider, or to the public concerned about the future of the valley.

At stake is the economic vitality of Portland, of Salem and Eugene, and the vitality of farms and ranches intervening. At stake is the consumption of our natural resources, our land, air and water. At stake is intelligent use of all our resources be they fiscal, natural or human.

Clearly, no snap of the fingers will produce the answer, if even one best answer exists. Even options regarding the use of the valley are slowly being closed. Picking the options and choosing the answers will take time. It's complex but its coming.

In summary, the Charbonneau investigation has reinforced the need for an intergovernmental process to pull together individual governments and agencies of the state to begin identifying and evaluating options in the valley.

APPENDIX

State and Local Agencies Impacted by the
Charbonneau Development

LOCAL

City of Wilsonville

Tualatin Rural Fire Protection District

Canby Rural Fire Protection District

West Linn School District

Canby Elementary School District

Canby Union High School District

Columbia Region Association of Governments

Clackamas County IED

Clackamas Community College District

Portland Metropolitan Local Government Boundary Commission

Port of Portland - Airports Section

Tri-Met

Mid Willamette Valley Council of Governments

Marion County

Clackamas County

STATE

Department of Environmental Quality

Division of State Lands

Department of Geology and Mineral Industries

Department of Agriculture

Highway Division, Department of Transportation

Aeronautics Division, Department of Transportation

State Parks Section, Highway Division, Dept. of Transportation

State Soil and Water Conservation Commission

State Water Resources Board

State Engineer

Higher Education (Agriculture Experiment Station)

Governor McCall. That is agreeable to me.

I left this last because I wanted to peel off my commendation to you to express a couple of reservations about S. 268.

We are finding there is no single action, in our estimation, which can do more for environmental protection enhancement than land-use planning, and this Nation and the several States, to paraphrase a couple of paragraphs, are in dire need of a land-use policy based on orderly development and prudent land use.

We do see, I just came from Honolulu, we see in this room today, in our hearing rooms in the State legislature where Senator Atiyeh had been holding hearings on the counterpart bill to your bill, our senate bill 100, our people are recognizing our land resources as finite. They are alarmed about how they are being mishandled, so there is a valid concern in development and growth and in preventing misuse of the land to an extent we have never seen before. So I do heartily commend this committee.

I notice the progress of this legislation and I want to make a remark on that, and if it is possible during the questioning, if I get over my depth, and you want to know what is happening, Senator Atiyeh can give you an answer on the basis of the hearings he is holding in our State capital.

I want to congratulate you on the perception and courage this committee has in introducing this legislation and working on it and holding these hearings, but I would like to express a couple of caveats now.

I expressed them about our similar bill, senate bill 100, before the Oregon Legislature.

I think both measures seem somewhat euphoric without really laying in the argument for the urgency that the dilemma requires, to have the dilemma challenged successfully. Although I am going to fight for passage of S. 268 and senate bill 100, the former, at least it seems to me, has one or two features that I classified in my notes as "cop out" features, because in the dissertation on the bill that we saw in the January 9 Congressional Record there is repetitive reference to "good faith effort" by the States.

"Good faith effort," and we use it in context with localities, I think we have to submit that good faith performance is sort of a character that does have a tendency to shield and encourage, I think, miscompliance and evasion, and sometimes duplicity and incompetence. Simply, like the old wrestler who is tugging somebody's hair and holding his hand out when the referee looks to see if he is committing a foul, that would be a "good faith" gesture when there might be all sorts of lack of performance that good faith would cover and gloss over.

I would rather use, rather than "good faith effort", the term "demonstrably efficient efforts", rather than "good faith" and get away from what I consider to be a lip service term to our obligations in this area.

By the same token, I want you to know, Mr. Chairman, I feel this legislation would suffer severely if it did not have the sanctions. I know some other Governors do not agree with this. But I see you not only as a partner, I see you as a Senator in this very delicate and important area where if we think there ought to be some sanctions to make us work harder, to make us get back on the track, because the land has to be saved and we are in the 9th or 10th inning of a ball game that is nearly over. There are no tomorrows if we fail to set this up properly at this time.

I also noted, Mr. Chairman, Members of the Committee, in the Congressional Record of January 9th that the measure before you was first introduced in January of 1970. I am alarmed to discover the terms on which you propose to help prevent the rape of the land, the rape of America, because the Congressional Record says the State is required to develop a statewide planning process within 3 years, and the next paragraph says the State is then required to develop within 5 years of enactment of the land use program. I think that it is folly to believe that we have 8 years. I think it is folly to believe that if you set a date even 8 months in the future, that you are going to meet the needs. Because any leeway, any future deadline, I think, and the sellers are going to cry out to the exploiters, "come and get it". Come from Texas, come from California, come from Nevada, as they flock into our State.

This is your last chance. So I think we have to cooperate on interim mechanisms that keep this land in a fairly frozen status. Otherwise we will see a land rush based on the buffalo hunters syndrome, that leaves us nothing for the rest of this generation and, of course, for future generations.

So, I would hope that in this sense we would not cater too much any more than the public relations that the legislation requires, to vested interests, to antipublic pressure groups who piously claim some kind of expertise concerning local control, because I think the public does want you to move, and the public is receptive to what you are doing and what we are doing.

It is like the reception I got in Honolulu on Thursday, when I addressed the Senate and the House of the Hawaiian State Legislature. We have a full page on the speech, the lead editorial says, "Oregon is setting the pace". We discussed tourism, growth and land use development. I would like to inject at this moment the idea that somehow in your deliberations, tourism has a part because you have perhaps 100 million nomadic Americans. Maybe you say, they are in Washington State visiting or Oregon or wherever they visit, only a few days, but wherever they are they require parks for their trailers, motels and hotels. This, of course, affects the whole planning pattern and the land use. This huge group, perhaps half the population of America, moving from one State to another in its vacation periods is definitely a factor in land use planning and zoning, particularly in those States where the coastal areas are subject to such tremendously intense pressure from these nomadic groups.

I think that to show you that we are not as enlightened as we think we are, that 1973 has brought sense, the State Land Use Commission in Hawaii the day after I spoke rejected the filling in of the only fresh water lake on the Island of Oahu, a fill of 29.4 acres on which there would have been high rise condominiums placed. They already approved in 1966 the filling of other acres in that particular lake.

In that connection, we toured the Snake River in relation to testimony we gave before this committee last year, and through the efforts of Senator Hatfield and others, we were successful in getting $4 million to help buy the meadows and the beaches and benches along the Snake. Fifty miles upriver by jet boat in the deepest wildest, canyon in the world we found a California type cottage sitting by the river. The man who built the cottage, a modest house of $25,000 in cost, had

paid for his quarter acre $4,000. They were subdividing land 50 miles upstream in Hells Canyon at a value of $16,000 an acre. So, again, the "buffalo hunter" mentality is not confined to the last century.

Incidentally, when I was over there, the tourism agency in Hawaii called the tourist office of our Hawaiian division in Oregon and wanted to know who let that zealot Governor of theirs into the Islands, because the formal apparatus didn't like the sounds we made about maybe thinking about a top limit to tourism. But I can assure you that it is, along with land use planning, a very popular subject.

I have no policies for the position we have taken except that I wish I were a hale and hearty 100, because I would have started that much sooner trying to save the things that you are trying to save by this legislation.

I started in 1938 working for Porter Ward, now a professional staff member of your committee, who was our City Editor on the Moscow Idahonian, as a wildlife conservation reporter. Now in 1973, after helping originate and draft the first State air pollution law ever adopted in the United States in 1951, and after helping write and narrate documentaries that saved valuable parts of the environment in 1968 and 1962, I still have to confess we are a long way from getting where we really want to go.

It is a funny thing, that even though they are in a minority, there are industry people who sneer at me, call me King Cong, because of letters like this: a lady wrote a letter to the paper saying, "We don't know whether to curtsey to him or say 'Heil Hitler'," because of the measures I have advocated and which you are considering today.

We do have the Senate bill 10, gentlemen, which we enacted coming out of the Agricultural Committee in the Oregon legislature in 1969, and it provided for statewide planning and zoning by each county and city, and if they fail to do so by December 31, 1971, then it was the Governor's option to step in, in any way he felt was necessary.

I think I, too, in the absolute sense, pulled a "cop out" here because there wasn't a single jurisdiction that asked for extension except one and showed some progress, that we didn't give an extension to. Long Rock was one exception, population 60. The mayor wired me after I urged him to get his plan in, he said, "No way, Governor, no way."

Again, we said these are good faith efforts. So we patted him on the back and told him to speed up. Now, all cities and counties in Oregon have done their duty under Senate bill 10. And, finally, in the last month I have had to say to one county, we are going to shut you down until your plan is done, until you can prove you are going to have adequate sewerage and potable water. This is a coastal county that attracts maybe two-thirds, or certainly half, of the 10 million tourists that come to Oregon each year.

So, we have kept the faith, I think, in a very difficult way. We have closed down a number of areas because of lack of sewerage and potable water.

I think what we have to face up to, and we can't gloss over, the land use problem. It is the fact that, as stated by Governor Love, I don't know whether he was here yesterday, if indeed he said in his message to the legislature the other day, we are very serious about seizing the opportunity in Colorado to create different patterns, we must accept and provide for more Government intrusion into decisions that hereto-

fore have been largely private. It is of course a difficult course we chart, but one which represents the only alternative to "business as usual" and the woeful results which can be forecast. I think we have to recognize in all honesty, and not gloss over, the fact that there is going to have to be more of an intrusion into the private affairs of people in the public interest.

I want to note that in that connection I am a member of the President's Citizens Environmental Protection Committee and that we have a special study going on land use planning and zoning and some of the other tough legal problems of land use. I hope, Senator Jackson, that our committee under Laurence Rockefeller, will make that material available to your committee. It represents what I consider the most avant garde and sound thinking we have in this whole area.

What it boils down to, Mr. Chairman, is that we are going to have more people living in our country, in your State, my State and our cities. They are going to need more of everything, houses, highways, schools, parks. We are going to have to provide them with their needs, but there is one thing we can't provide more of, that is the finite resource, land.

A lot of planning has been done, we have had, however, not an incisive enough system in our State for deciding what is right and what is wrong, what is good, and what is bad.

We feel Senate bill 100, our old Senate bill 10, still in effect, and S. 268, start the process to develop that system. So we would urge, speaking, I think, for the people of Oregon, that you enact S. 268 speedily, backed by reliable funding, including the sanctions that have been stripped from the legislation, because that is the only way it can be implemented with the determination it takes to meet this problem. If so, we will not leave our children a legacy of chaos. We will avoid the chain-letter economy that David Brower spoke about, in which we of today pick up the handsome return, and those of tomorrow find the mailbox empty. So let's resolve that we no longer suffer from the "buffalo hunter" mentality. It is time we serve notice to all to stop ignoring the problems, stop talking around it, and let's make this a common cause so that we can enjoy rather than endure our quality of life in this country. Thank you.

The CHAIRMAN. Thank you for a very fine and complete statement.

I have two or three questions, but I will defer to Senator Hatfield inasmuch as he is caught in a situation where he has to leave shortly for the Rules Committee meeting.

Senator Hatfield.

Senator HATFIELD. Thank you very much, Mr. Chairman.

As you can easily see, Oregon has kept on its toes in either anticipation or surprise by the kind of leadership exemplified by Governor McCall.

I appreciate very much your formal testimony which I have had a chance to read, as well as in the embellishments and illustrations you have given in your oral presentation. I think that again Governor McCall has exemplified the traditional and historic progressive spirit that we claim for our people of Oregon.

The Governor has indicated that he has threatened to close down a particular county. It happens to be my home county. But there are no political ramifications here because that is where his home is, too.

I don't know how many times you have been able to visit and enjoy your home since that declaration. [Laughter.]

Senator HATFIELD. In case you want to come and use my home in disguise, you are certainly welcome to do so.

Governor, one of the things that strikes me as a basic problem here is that we are dealing with government to government to government, from Federal to State to local government, and sometimes we have not really sought to employ the average citizen in this general overall concern that you have expressed this morning about land planning, land use and land rehabilitation. Would you comment on the situations we face. I am sure it is typical of most States, of the relationship of land assessment to land rehabilitation and to the enhancement of land values?

Let me cite an illustration. We happen to be very privileged to be able to own about 220 feet of beach front. I am not sure where our line goes or what the definition of that border is, but at least we are on a cliff overlooking the Pacific Ocean in a pine grove which is a delightful place.

Just below us, before you reach the ocean, we have sand dunes. The greatest problem we face as landowners and stewards for future generations is wind erosion. That wind erosion is going to ultimately have to be faced by all the coastal zones, as you know. We have sought over a period of time to rehabilitate and protect against the erosion by the planting of grass first to stabilize at the bottom of the cliff, then to build up a foliage of scotch pine trees to protect the face of the cliff. Yet we find as we are doing this the assessor is increasing the value of our land to make it a penalty, almost, to invest this kind of activity in the future.

I am bringing this up for my particular purpose, but I find there is a basic discouragement on the part of many people to do the things that I think we should as land stewards, and I use the word "steward" rather than landowner, I like to get that concept across. We tend to relate any enhancement or rehabilitation as a cause of increasing the tax rate on that particular land. I think this is a discouragement to many people. It is not to us because we are in a position where we can do this, fortunately. But what is the role of the States and local governments in encouraging the participation of individual citizens to act as stewards of land rather than just to exploit for their own purpose and the heck with future generations.

Governor MCCALL. This subject comes up also in relation to another problem in the area. When I was Secretary of State you and I discussed legislation that was even more broad that pertained to the private home of an individual who improved that home and had to pay more taxes because the improvement added value to that home, and the man who let his home run down got the reward really because his taxes became less.

I think part of the stewardship here, that is a question, Mr. Chairman and Senators, as I say, which is uppermost now. I brought a treatise on it for a meeting at noon with Members of Congress. Here is a question. There is a sand spit not far from Senator Hatfield's home where a number of people built houses. If we had proper land use planning and zoning this would never have happened. Because we know from the records that over 130 years that they have con-

stantly found logs when the sand has washed away under this sand spit, and relatively fresh, that shows this comes and goes. Had we planned, this would have been out of bounds.

Now, the question is the sand spit may be breached so badly that the sea will bring into the bay tens of thousands of tons of sand to fill in this wonderful estuary. So we have a problem of saving the homes, the spit, and the estuary. It is too big a problem for the homeowners but because of the public value of the land involved, the Government is going to have to do that.

I think those dunes are priceless in terms of the public's enjoyment, both scenic and hiking enjoyment and the stabilization of the dunes is a responsibility of the Government. But if you want to make a local contribution of your own, I think that would be perfectly in order and it would start a trend that would be desirable. But all along the coast this kind of stabilization has been done and in the natural seashore area, as you know, it has been done very well under the aegis of the Federal Government. So I think it is a Government responsibility because of the nature of our beaches which belong to the public.

Senator HATFIELD. I also gather that from your comments you support the sanctions included in the original bill of the last Congress. Yesterday, Mr. Russell Train urged us to not only apply sanctions, but he used the words, "tough sanctions." I assume the sanctions which did appear originally in last year's bill would be more in keeping with what you recommend?

Governor MCCALL. Yes, indeed; you just can't have defiance in this area. Because then you are past the point, after a certain amount, where you can begin to save the lands. So it is a total loss of a resource and I think the penalty ought to be commensurate.

Senator HATFIELD. You don't feel any loss of sovereignty of State's rights?

Governor MCCALL. No; I don't believe it should shield the use by the States.

Senator HATFIELD. I have no further questions, thank you.

The CHAIRMAN. Thank you. I just wanted to follow up on the sanctions that Senator Hatfield referred to. We had it, as you know, in the bill as reported. It was taken out on the floor. I want to hear your view regarding the kind of sanctions. The sanctions that we had covered airports and primary and secondary highway systems. We left out the Interstate System. We left out the Interstate System because it would be unfair to a complying State to have funds taken away in another noncomplying State which would penalize their portion of the Interstate System, as well. So we confined it to secondary and primary highways, land and water conservation funds, and airports.

Now, would that generally fit into your concept of sanctions. Do you have any other thoughts that you might give us in this regard? Because this is going to be, you understand, a major area of controversy.

I have stated to a group of environmental writers earlier this morning that we need sanctions for compliance. There has to be an incentive, otherwise you can't do it.

In connection with the land and water conservation fund which we established some time ago, we required the States to come up with

statewide outdoor recreation plans. In the old setup you and I know what happened. The cities and the counties were going off on their own in developing parks. In order to qualify for fund moneys the States had to prepare these plans. The result was that all the States did comply. I think we have a pretty good program going now. It needs more funding, like everything else.

Now, in our bill, ours was a phased reduction. You just wouldn't cut off all funding. But over a 3-year period there was a 7 percent reduction the first year, 14 percent the second year, and 21 percent the third year.

I would like to know whether you believe we ought to include some other area or change the areas presently in the sanctions?

Governor McCall. The sanctions would run, Senator, when the State failed to comply with the requirements of the act.

The Chairman. That's right. Now, the first 3 years—we give them 3 years to inventory the land. Then 5 years from the date of enactment to have the State land use program and sanctions wouldn't start under the old bill until after the 5th year, so there are 5 years in which to do all of this. The thesis, of course, is obvious. If you are going to build airports we ought to know where they are going to be built on a long-term basis. Likewise other projects, so that we don't have the kind of duplication and collision courses that will follow between development on one hand and conservation on the other.

Governor McCall. Just broadly, I think you ought to put the sanctions on where they hurt most. Where they have the greatest leverage toward getting the kind of response that we would expect under this legislation. So I would leave it up to your discretion where those areas are.

I would like to say again that 8 years to get it done——

The Chairman. It is 5 years. The inventory must be completed in the first 3 years. Then 2 years later they have to have their State land use program approved. So we are talking a total of 5 years. The first 3 years would be to inventory the land. Of course they can be working on both the process and the program; the bill is flexible. For example, in your State, you have been working so hard on this, and I think Governor Evans is endeavoring to do the same thing in Washington, that there is no reason why States such as these couldn't comply in less than 5 years.

I think time, obviously, is of the essence here because the rapid rate of our economic growth and the need for land use decisions in so many areas is so critical that everlasting damage can be done to the land if steps to protect it are not taken quickly.

As I have pointed out, what we are really trying to do is not take away State's rights, but to provide a nudge and a push to get the States to exercise States rights. Do you agree?

Governor McCall. Certainly.

The Chairman. The police power to do these things resides in the States. Our only power that we have as long as we are providing grants-in-aids is to withhold some of these funds if the States don't exercise their powers. But I don't see how a State can object, really, to working out a State land-use program. Any prudent business person, any prudent individual would do the something: look ahead and recognize the things that must be done. The decisions which must be made con-

cerning our land in this decade alone are numerous indeed. And the experts tell us between now and the year 2000 we will completely rebuild America. We will do in 3 decades what our forefathers took 3 centuries to accomplish. It is the rate of growth and the pace of growth that concerns me and the utter breakdown of local machinery to make the necessary decisions, either for development or for conservation.

If you get a good land use lawyer you can tie up anything in my State. We have 2,000 governmental entities in the State of Washington which have some authority in land use. This is why Governors have difficulty getting land use planning through because some of these local governmental forms go back to colonial times. It is going to reassert State authority unless there is a big nudge.

I might say, I guess, you fired me up here a little bit, but it seems to me that the tendency, if we don't do this, would be for the Federal Government to engage in land use decisionmaking on non-Federal lands which I think would be a catastrophe. I believe very deeply that if we are going to have viable and sensible decisions on land use planning, it must involve, and I am sure you would agree, the participation of our citizens starting right at the local level. Uncle Sam does not know best in this business. But the areas of Federal intervention over the years has come from a failure of the States to act, nonfeasance.

Governor McCall. I fully agree with what you are saying, I want you to realize that. You also have to know that the closer you get to the grassroots the harder it is to do these things that you can do more easily as a State or more easily as the Federal Government, because of the parochialism and whipsawing that comes when the neighbors don't want to do this to old Tom, and they all meet in the election club and they are all friends. So we need the strong sword of Damocles that the Federal Government can provide because of this situation.

I certainly concur with you that the local input must be there. Our Senate bill 10 says there must be statewide planning and zoning done by the counties and cities, not by the State. We have a planning we are developing for the Willamette Valley called "Operation Foresight." This involves the betterment of all the people in the valley. We have a 14-minute show. I wish we could have brought it, but it costs $400 to bring it, but I would like to show it to the committee. It shows you the alternatives of what the valley is going to look like by the year 2000 the way it is going now, and what would happen if you took three or four other alternatives. One alternative is a spine of mass transit that comes through the valley, leaves your cars at home, and changes the character of housing by clustering it and leaving a lot of open spaces and still accommodating a lot more people in a cleaner atmosphere than we have today.

The way we are getting it over is to show this slide show every night to as many people as we can show it to and let them make the decision, which kind of valley do you want by 2000? So it has to come from them. But I think the proper stimulation and help and guidance and the offering of alternatives has to be prepared at the more expert level, perhaps.

The Chairman. This whole effort on our part is an action forcing procedure which I keep repeating is a simple policy guideline to the States. We are saying you just enforce the authority that has been

vested in you under the constitution of the State. You see, I don't want the Federal Government coming in and doing these things, but if you look back over the years, where the Federal Government has intervened, it is because the States have failed to act. Governors have a special problem trying to get an agreement on the statewide basis when there are so many competing political forces that relate to local attitude and parochialism, isn't this what it boils down to?

Governor McCall. Yes, there is an exact parallel between this and no-fault insurance. I voted "no" at the last Governors' conference, when they said the Congress should leave to the States the no-fault insurance problem. I wanted the Congress to hold the scimitar over their heads so that the States could go ahead with it. I think we need you in this role. I think the presence of strong legislation and determination almost obviates the fact that you may have to move in. Just the presence here is enough.

The Chairman. All right. One other thing. We recognize in this bill the need to concern ourselves beyond State boundaries, regionalism, interstate regions. I wonder if you have any suggestion in that area? Again, what would be the best way to deal with those environmental situations or land-use situations which obviously have an impact on a neighboring State? Compacts? Or what is your experience in this regard, how best to do it?

Several Governors visited me yesterday. I think it is fair to say they felt, well, we have a very good relationship in our areas and through the Governors' conference on a 1 to 1 basis, we are able to resolve most of these difficulties. What have been your experiences and what are your suggestions in this regard?

Governor McCall. I am not sure we can pass it off that lightly. I really feel if these regional economic development commissions can include the function of handling land-use planning and development across State borders, this would be the best media. We formed one with Idaho and Hawaii is coming in and British Columbia, we hope. That is the kind of relationship we ought to have. I think you can't leave it to some informal kind of arrangement because there are differing standards between the States of Washington and Oregon, for example. We have tougher air pollution standards and water pollution standards. So it would have to be some kind of thing that would compel you to work together for the common good on a regional basis.

Perhaps the Regional Economic Commission could be expanded. The compact is a terribly slow process, it has to go through Congress and the legislatures of the prospective States. So I think we can use it through the regional commission and expand its purpose. That would be the best way to go.

The Chairman. As you know, the last session we passed the Coastal Zone Management Act and this, by the way, is complementary, as you know, to the land-use bill, but there is no funding in the curernt budget for this program. I wonder, looking at it from your point of view in Oregon, whether Oregon could wisely use some funds in connection with the implementation of that act?

You have a beautiful coastline area, like ours. We won't compare them beyond that point because it might become involved in a long dialog, but let's just say they are both beautiful, and we have a great interest in preserving and protecting that beauty and that environ-

ment. I would like to have your comments on that. This is my last question, and I will defer to Senator Fannin.

Governor McCall. I know our coastal development commission, set up at the last legislature, had expected funds under the Coastal Zone Management Act. But they tell me they would just as soon have it under your act. In fact, we would rather have it from an overview that is statewide, have the funding come in, so we can relate all the problems of the State rather than one area. So we would certainly hope those Coastal Zone Management Act funds would be, now that they are not in that act, would be forthcoming in your act so we could continue the work of this coastal management commission which is really making some real progress.

The Chairman. Thank you very much Governor. I appreciate, as always, your forthright comments. You are a good neighbor. Is Washington included in that edict, you know, come visit us, but we don't need any more immigrants?

Governor McCall. Washingtonians don't need a visa. Thank you very much Senator.

The Chairman. Senator Fannin.

Senator Fannin. Governor McCall, we are very pleased to have you with us this morning. We appreciate your brightness and forthrightness. You have many first year credits. Sometimes we feel as you do about what is happening in the States. Regarding future developments.

Now, let's discuss one very controversial item that most of us have not faced up to. I feel very keenly about the handling of Indian lands. Should their lands be included in the land use process, rather than excluded in S. 268?

I would like to explain my position in order that my thinking may be of help to you. Perhaps it is unfair to the Indian people and the people in the surrounding areas of the reservations if we take the position that their lands should not be included in the planning process envisioned in S. 268?

Governor McCall. It is just a value judgment. It seems to me there should be no lands excluded because if you have a large area of land, particularly a reservation such as Warm Springs in our State, which contains priceless natural resources, if those are degraded, it could have an impact on the general level of the quality of life in Oregon. So I think they ought to be included.

Senator Fannin. There are Indian reservations in your State, as there are a number in Arizona. Accordingly, I can appreciate your position. When a hands off stand is taken, it could be very detrimental to the Indian people in their planning for developments which they may want on the reservation. So I am very pleased that you agree in that instance.

Governor, you have handled this question partly with Senator Jackson, our chairman, when you answered his inquiries about the land use planning processes. However, I am concerned over the degree of disruption the land use planning processes in section 320 will cause in your State? Do you have a copy of the bill there?

Governor McCall. I have one, yes.

Senator Fannin. On page 17, the bottom of the page, through page 22, the planning processes are stipulated. How much disruption might this cause in your State?

Governor McCall. Well, Senator, I can't give you the quick scan and tell you, but our senate bill 100 is patterned after this particular bill, where we have areas that are a major concern of the State, and which go to the State commission for decision. The plans and guidelines of the localities and the counties and the regions within the State to go the commission. So I don't see it as a disruptive process, I see it with the sanctions that could be invoked, a process that could flow and could be productive.

Do you have some reference to one particular part of it?

Senator Fannin. Well, the question was raised since some of the Governors have indicated that this requirement couldn't be instituted within their present State laws in the time frame of the bill.

Do you feel you could institute these processes and amend your State laws, if necessary, with the time frame worked in the bill?

Governor McCall. I think we are well on our way of doing it if we are not already in compliance with the structure and guidelines.

Senator Fannin. I commend you. I think you are far ahead of most of the States. This may not be a problem for you in Oregon, but there is some concern in this area.

Governor McCall. It is a very tough process, we have had it attacked, it is a growing army to repeal our planning and zoning law. I was running for Governor in the second term and I said if you knock out this, I don't want to be elected and preside over the degradation of the environment in the State of Oregon, when normally Governors will knock out both of them. I think that 5 years actually strikes me as being too much time unless you have some interim protection. This land could be despoiled irremediably in 5 months, rather than 5 years.

Senator Fannin. You have taken action prior to the elapse of the proposed 5-year limitation set forth in the bill.

I was wondering, Governor, in considering the cost to the State, what level of funding do you favor?

Governor McCall. That, Senator, I couldn't answer, really, with any authority. Because I don't know how our new plan is going to end, what shape it is going to be. We will have to compromise and do this and that and push forward on our own. Senator Atiyeh has been holding hearings on the Oregon legislation, if I may ask him if he has any handle on how you would put a figure on that?

Senator Fannin. Well, I think he is going to testify later, Governor, and we will then determine his ideas. We have to know whether the proposed funding level is sufficient to accomplish the objectives outlined in the bill.

Governor McCall. Speaking of money, I couldn't really tell you exactly how much. I just couldn't put a price tag on it, to be honest with you. I will try to make some kind of an informed analysis of it, Senator, but you know what it would cost to do it in a timely fashion.

Speaking of funding, I would also say, on this coastal matter, we only have 50,000 acres of estuary in our entire State on the coast, that although the funding will come under this bill, we think you ought to give a special weight in favor of coastal areas, if it comes under a statewide application of a plan. This was asked a little earlier.

Senator Fannin. Yes.

Governor McCall. We would just as soon get it under your act as under the Coastal Zone Act. But it seems to me we should weigh these

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financial grants, whatever they are, more heavily toward the coastal than any other areas because of the fragility of it and the tremendous use of it by all of the people of the United States, particularly the people of the State of Oregon.

Senator FANNIN. I feel that perhaps the sanctions included in this bill and the previous bill have caused some concern by the Governors. The severity of the sanctions would possibly cause a decision to be made that perhaps would not be made otherwise, or be inconsistent with their rights as a State. However, if the sanctions were such that they could not stand the pressure of having them adopted or come about what would be their recourse?

In other words, if the States were facing a severe penalty in this regard, perhaps they would be forced to make decisions that were not of their liking but the political pressure, and the thought of the consequences of these sanctions would cause this adverse action. Do you feel that way, too?

Governor MCCALL. If we assume there is a method by which you can plan and zone that is viable and workable, then I think their argument is really one that temporizes with the question, the question of how best do you protect this land as soon as possible with an orderly plan. I think you need the compulsion of this particular kind of sanction because the massiveness of the problem is such that if you are dilatory about it, there is no time to even try to do planning. I think we have a short time to do this right.

Senator FANNIN. Well, the question is whether or not this is setting a precedent that could almost result in dictation by the Federal Republic?

Governor MCCALL. It might be sort of a "cop out" to use that phrase again, but when some county commissioners do some things under State law that are unpopular, they can blame it on old Tom, and old Tom can blame it on the Feds. It is sort of convenient. They say this is what they ordered us to do. It gives you a leverage in trying to do something that ought to be done. I don't think, however, that the sanctions should be painless because they would be meaningless if they were. So I don't know what the dollar values should be, but that ought to be enough to apply some leverage.

Senator FANNIN. You feel the sanctions should be sufficient but you don't want them to be such an obligation that the Government would not use its good judgment in testing a decision by the Federal Government?

Governor MCCALL. That's right. But we all ought to be picking up our heels voluntarily and moving into this.

Senator HATFIELD. I think one of the things we are wrestling with in this committee, and I speak as a cosponsor of this bill as well as the one last year, is what we might call the positive as well as the negative approach to sanctions. We can use the club or use the carrot or a combination. I think some times people respond much better under an incentive, a positive incentive which can be intepreted as a type of sanction than purely if you do not do such and such we are going to clobber you on the side of the head. This is the sort of thing that is going to trouble some of us on this committee. That is, how do we respect the individual, where we did not put the Government in purely a club relationship, at the same time to outline the responsibility of the individual and perhaps through incentive accomplish the same objective.

I think the tendency of the Federal Government has been to use the club approach. The State will do such and such or we will in turn react to that failure in a purely negative way. I think there are other programs where we have seen how successful they have been by the incentive approach to the State government.

You take the leadership and prove one-third or one-half and we will assist in this by providing the other half under certain general guidelines that you implement and adapt to your local unique character as a State.

I think that is what we are wrestling with in this particular legislation. I certainly understand Senator Fannin's reluctance to go to what appears to be purely the club approach.

Governor McCALL. I think all of us are familiar, and you have lived with it in Washington more than I have, with this same relationship of the Highway Beautification Act, whether you should have the club or the carrot.

But when you are funding, as you contemplate in this bill, that is the incentive. If we misuse that money, in a sense misappropriate it, and don't do the kind of job that we are expected to do, I can't see the Federal Government sitting idly by and letting some State really not produce the plan for which it has the funding. The funding is the incentive. Somewhere along the line we have got to do these things and they have got to be done darn soon, that is all I am worrying about.

Senator FANNIN. Well, I don't want the sanctions to hold up the passage of the legislation.

Governor McCALL. I think, Mr. Chairman, certainly the sanctions shouldn't break the States. It shouldn't ruin their viability, but they should sting like the devil.

Senator FANNIN (presiding). Senator Hansen.

Senator HANSEN. Thank you very much, Mr. Chairman.

Governor, we are delighted to have you appear before this committee. I would like to take this opportunity to congratulate the staff and all who have participated in seeing that this committee, which I think is engaged in a very important responsibility at this moment, has access to information and knowledge from people who have been on the firing line. The State Governors have been forced by virtue of their offices to come to grips with the tough decisions that are demanded of them. The committee's expectations have been fulfilled this morning by your dynamic appearance.

Let me refer, if I may, to the chairman's opening statement. I will not read all of it, but I would like to call attention to part of it. The chairman made reference to the amount of time that Congress has consumed in trying to enact land-use policy legislation.

He said:

> The costs of this delay are real. Take an example close to home. The Sunday Washington Post reported that more than 30,000 acres of Maryland farmland are taken out of agriculture production each year for development or to be held by land speculators. This means that 90,000 acres of Maryland farm country alone have been consumed in the 3-year period of consideration and reconsideration of national land-use policy legislation.

I shall not attempt to put any words in the mouth of the chairman, but I would ask you to focus your attention on this statement. What do you infer the chairman may have meant by that statement, Governor?

Governor McCall. I would say it was in the context of his further statement on January 9, where he quoted some statistics suggesting that unless our land use decisionmaking processes are improved at all levels the United States will be unable to meet the emerging pressures, and it will result in the dedication in the next decade of an additional 18 million acres, or 28,000 square miles of undeveloped land to urban use.

That is part of this process. To localize it to Oregon, we have conducted a statewide survey for purposes of our legislation and we have evaluated 356 subdivisions in Oregon involving 316,000 parcels of land covering nearly 10,000 acres, and developed the fact that nearly 25 percent were inadequate for any sewerage handling short of septic systems, yet such an approach was not planned for any of them, and 100 percent were planned for privies exclusively.

In this one county that we are referring to, we looked at 41 subdivisions with 1,025 lots platted in that county in a 2-year period, and 562 of those lots in this county were unsuitable for septic tanks. But still the developers were going ahead to plan the subdivision in the absence of these proper conditions.

I am simply saying this is going on, and it is getting more and more out of hand, and I am afraid if they see some leadtime and think this legislation is going to pass, this cry will come up. The last area will explode and this is a real beauty adjacent to our heavily populated areas.

Senator Hansen. There is a considerably large number of people in Washington who think, insofar as I can gather from their statements, that there is little reason to be concerned about the adequacy of farmland. As a matter of fact, these people say there is no need to pursue further the development of any reclamation projects, that we have got land, millions of acres of it. I think the estimates range from 17 up to 30 million acres of land for which you and I and all the taxpayers of this country now are paying to leave productionless.

Dr. Louis Mumford, who testified before another committee here several years ago, discussed the problems of the big cities, crime and violence and all of the ills of urbanization. As I recall, he felt that we would not, despite any well intentioned efforts of either the municipal, State or Federal Governments, to alleviate some of the more distressing problems that may lie at the root of the ills of our cities. He felt there really wasn't anything that Government could do with any significant assurance of success to alleviate these problems until people had the opportunity to spread out.

I talked with Senator Percy and he told me about the Federal Housing programs in Chicago, how the Government provided good homes and apartments for people, and how within a few months, or maybe at the very most a few years time, these dwellings became shambles. Is it your feeling that America would best be served by a very slow rate of movement, insofar as building goes, into the remaining undeveloped land? Or do you think that steps should be taken now to stop what may have happened, say, here in the State of Maryland. I don't know. There is no breakdown in the statement that the chairman made to indicate how much of this 30,000 acres is actually occupied by subdivisions now, and how much, in his words, still remains in the hands of speculators.

But do you think that to stop that sort of effort, that steps should now be taken?

Governor McCall. To stop it being done in a haphazard way, certainly. The main objective is to preserve agricultural land, particularly in the Willamette Valley, which is the finest land in the world. We are thinking about, with irrigation at Columbia, of putting 2 million more acres under water, maybe getting into soy beans, which would make my old friend, John Love, very nervous.

But the deployment of population is very important and ought to be part of our planning and stimulus to cause people to move to these lovely areas. The deployment of people ought to be one of the objectives of land-use planning, including the handling of those nomads whom I mentioned who amounted to 11 million people in my State last year. So I think certainly it ought to be used judiciously and you ought to delineate and project into the future, Senator, what pieces of land are going to be needed for what use insofar as possible.

I would say new cities definitely should be one of those uses, but at the same time there ought to be rules and regulations and ordinances, so that the urban sprawl could not build up from a very pretty, small, satellite-type city. So I think this planning and zoning is one of the best remedies for this wildfire growth that we have had in Oregon. I had to stop the building in Lincoln County; no more unless they get State permits for sewerage and water. In central Oregon, up in the country, Jefferson County came down and asked me to declare a moratorium. They said the subdividers were running rampant. So this is the best way, along with strong subdivision laws, to put some orderliness in this so we don't use up everything today and stretch it out in a scientific way so it is valuable for future generations, too.

Senator Hansen. I don't disagree with you at all, Governor, in your concern that the States, counties, and cities have been long overdue, in adopting what I think are perfectly reasonable standards that must characterize any subdivision.

I think the obvious need is to protect others insofar as that would result from adequate sewerage facilities and the assurance that water shall be kept potable. This is necessary. I think as subdivisions are built certain areas ought to be set aside for schools and for recreation, open spaces. I don't disagree with that at all.

I did get the feeling, though, that without a little more specificity than the chairman has given us, I'm left a little unclear as to what precisely has taken place in Maryland. I have been in a few places and a few homes that I am sure are not as lovely as those along the Oregon coast where you can look down on that great Pacific Ocean as you are privileged to do. Nevertheless, people in this area are insisting upon zoning in some respects and resent, understandably I think, the intrusion of multiple dwellings. They like to keep the standard at a certain level and resent and oppose the intrusion of low-cost housing and opportunities for more families to enjoy more of what some might refer to as "the good life."

Would you care to comment on that?

Governor McCall. The observation that we need more good housing?

Senator HANSEN. Yes, generally. Would you agree with me that a land-use plan may be all well and good, but to make it effective and meaningful, some zoning by some authority is needed to implement what the planners say is desirable. Would you comment on that?

Governor MCCALL. Yes, sir; I would care to comment on that because you may have a witness from Oregon in the near future who is against zoning. He says that zoning doesn't work, look at the proliferation of sprawl. But I don't think that the seeds of its not working are within the process itself. They are within the weaknesses of the human beings who are trying to do the zoning. It is this loss of backbone and this granting of waivers and changing from a conservation use or residential use to a commercial use, absolutely unjustified by the merits of the case but caused by the pressures that I think have given zoning whatever bad aspects it possesses.

I know a professor said the other day that zoning was absolutely an innocuous thing and didn't mean anything. The whole problem is being discussed by Mr. Rockefeller's task force. It is a funny thing why in a city you accept zoning, for a residential area, I have a friend who has some beautiful lots on the side of a mountain that could probably sell for $50,000 if they could be put into apartments. But he is being zoned out of that and they are probably worth $10,000. But in the country, when you start to say you have to make the same sacrifice for the public good, that is where we begin to boggle and we find a great deal of differences in the courts. But it seems to me if it is applicable in the city without the "taking" issue applied to it, that the push of recreation and open space would make it equally applicable to zoning in the country as well.

Senator HANSEN. You say if it is applicable in the city without considering the taking aspect of it. I suspect you mean that the zoning board could in reality greatly determine the value of a person's property.

Governor MCCALL. Yes.

Senator HANSEN. In last year's bill an amendment was added on the floor which would recognize what might be called an inverse eminent domain right. That is, it would give to a landowner or property owner the right to go into a court and to seek an official declaration that his value in property has been diminished by the action of a zoning law. would you favor the inclusion of such a provision in this bill?

Governor MCCALL. I would not, for the reason that we have already accepted zoning within incorporated areas. The code in Oregon was brought up to date and consolidated and put into full force, all of its components, in 1947. I think it is true in all the States, that zoning within the cities and other incorporated areas is a necessary part of the business of government and a social obligation. I think if we took that, then we would have to do retroactively an assessment of what it would cost every person who had a chance to sell his big lot for a business building. What it would cost him to have to keep it in the residential use.

But I think if we had to do that, to figure out what the losses were, Senator, it would be so prohibitive, I am talking about $300 billion, or something like that, that we might just as well forget planning and zoning, at least.

Senator HANSEN. $300 billion, you say?

Governor McCall. Yes, if we had to take all of the values that were held down because your area, where you live, is a residential area held away from the pressures of commercial development by zoning and made the difference between what your lot was worth now and what it wolud have been worth as a commercial venture, if you are going to compensate people on that basis, there isn't enough money in America to do it. So, I think there may be a certain justice in it, but we have gotten so far down the other road, we have to go for the overwhelming public good which comes from zoning in the public interest.

Senator Hansen. If I recall correctly, Senator Ribicoff observed that to start to do the job necessary in America's big cities today would cost, in his opinion, $1 trillion. You say this cost here in your judgment might be as much as $300 million.

Governor McCall. Well, I am more of a piker than Senator Ribicoff is.

Senator Hansen. One further question. Title 4 of this bill, on page 38 and 39 addresses itself to the use in planning and management to adjacent and non-Federal lands. In a word, I think what is intended by this section is to require that plans be developed so as not to degrade or impinge in a harmful fashion by use of private lands those uses and qualities found in Federal lands.

Now, I note in your testimony that about 53 percent of the State of Oregon is in Federal ownership. In the States of Colorado, New Mexico, Utah, and Wyoming a statement has been made that may indeed be finalized. They point out that if we include land areas within the States where the surface is 45 percent or more in Federal ownership and add the lands in which the subsurface is owned privately, decisions by the Federal Government actually impact by two-thirds of the federation of Rocky Mountain State land areas. Do you feel any concern with the likely intrusion of Federal control on adjacent land areas within your States if this act were to be passed as it has been presented?

Governor McCall. In other words, the Federal areas are responsible for their environs, even though the environs are in private hands, is that the provision?

Senator Hansen. That is the way I read the section. I think what is required by the bill is that land use planning contemplates the impact the adverse or conflicting use of privately owned lands could have on the Federal domain. One of the requirements of the bill is that this has to be reckoned with and I believe this is the way to measure the Federal impact on the land planning that must be adopted by the States. They chose arbitrarily to assume that the distance of 1 mile from federally owned real estate into the privately owned area would be the zone wherein the adverse activities on privately owned land would impinge upon the Federal objective.

Governor McCall. But on the other hand, the Federal land shall consider State land use programs prepared pursuant to this act. So as long as we are working under the same plan for all land and there is a coherence in that sense, it seems to me the question would not be one that we have to worry about. Because we are working out of or along the same blueprint, no matter what the character of the land is or the ownership. I think that would be my answer, Senator.

Senator Hansen. No further questions.

Senator FANNIN. Senator McClure.

Senator MCCLURE. Thank you, Mr. Chairman.

Governor McCall, it is always nice to see you and, of course, as our neighbors to the west we have some contacts with you and some acquaintance with your policies.

Of course there has been some allusion already made you that are somewhat famous throughout the East and Northwest having said to the tourists, you are welcome to come, but please don't stay. I suggest a slogan that might serve us better, "Please don't come, send money."

Senator MCCLURE. We are working on that and I think it addresses itself to the same nomadic group of people who live in other areas of the country but have a real impact on the land use pattern and political structure of our State.

One thing that hasn't been mentioned in any great detail today, and that is the distinction that has been attempted on the part of the adminisration to indicate that the Federal Government will be the catalyst for action, the Federal Government will assist the States through the device of grants and through the sanctions that require the States to go through the process of planning and consider certain factors in that planning process, but not to dictate the result of the plan adopted.

There are others who are more comfortable with the idea that the Federal Government should also have in the national interest the right to override the State planning process and dictate the results of that plan.

Which one of those two directions would you advocate?

Governor MCCALL. I am not trying to beg the issue, Senator, but I would like to say this might be my answer just off the top of my head.

The Federal Government, I think, since it is a part and contributes, might not have power over the content and the details, but I think it ought to have a review over the guidelines, so we make sure there is consonance between the States of guidelines that would be calculated to produce the same result. So we have a uniformity of land protection and use across the country. I think that would be the purview I would favor, not just getting into all the nitty gritty but setting up certain standards and making sure those standards are the ones that would be used as a blueprint for determining what the content would be.

Senator MCCLURE. There are certainly overriding concerns that deal with certain specified types and conditions of land use. Certain areas of critical concern, the interaction between conflicting State plans. I think none of us would desire to exclude the Federal Government's preemption in those areas. But there are a great many of us who fear the direction of the Federal Government when it would override local determination of what the issues might be. You have mentioned, for instance, a parochialism that sometimes prevents a county from adopting a plan that might be consistent with the State planning effort or the State direction or the overall plan for a region. I couldn't help but think in terms of an overriding Federal interest, that your example of Carney County having gotten involved because they were afraid of radioactive waste being disposed of, might be overridden by a national interest. I suspect you wouldn't like that kind of a Federal overriding local decisionmaking.

Governor McCall. On the other hand, if it involved estuaries and they were being abused and they were putting oil refineries and things like that on them and the Federal Government superseded our authority and said this cannot happen, I think sometimes they are really highly necessary. I don't have the same fear of them, really, that a lot of other people have because we have a counterpart position in relation to the localities. I am a Governor in that sense. What we are saying in this county that hasn't had planning and zoning, you have a show cause hearing on the 20th of February to show cause why I should not take over that function, but I would have to charge you if I supply the planners and do the planning.

Senator McClure. It seems what you are really saying is, as long as the Federal Government goes in the direction that you would like, you would welcome their intervention, but if they go in the direction you wouldn't like, you wouldn't welcome their intervention. But you assume they will go in the direction you like.

Governor McCall. We talk about guidelines. As long as we had a consonance of thought on the guidelines, we wouldn't get into the details too much, as I said.

Senator McClure. But suppose the Federal Government should adopt a direction or guideline which was in conflict with your opinion as to what ought to be done in the State of Oregon?

Governor McCall. Well, I think, like on water pollution, as long as our standard in our State is higher than the Federal standard, then I think we should be allowed—we would like to put more protection to keep the waters clean than the Federal Government requires of us. It is my thinking that as long as we lean toward the side of the angels, there certainly shouldn't be any penalty.

Senator McClure. You are assuming that the Federal Government is always on the side of the angels, and I have some doubt about that. Supposing the Federal Government should decide that, indeed, we need a new community development to get out of the urban sprawl and the concentration that exists in Los Angeles, and a good place for it is right smack in the middle of Willamette Valley? We are going to go down there and the Department of HUD is going to establish a new community in the middle of the Valley and bring 250,000 people in there. I assume you wouldn't like that result?

Governor McCall. But, Senator, what has that to do with this bill? They could still go in if they are going to do it in absence of this legislation?

Senator McClure. If the Federal Government has the right to override State plans, I think they could do that. If they don't have the right to dictate the result of the State plans, then I think there is a protection for the State.

Governor McCall. I am saying there ought to be reasonable guidelines that make all the States responsible for viable statewide land use planning and zoning done at the local level and encouraged by the State and local governments, I am not saying in every detail they could look at the content and judge that. But I think perhaps they can work toward some uniformity. After all we are trying to save what is left in every State. I think, generally, on guidelines, the Federal Government is not that aloof that we could not work out what we felt. We are not so terribly afraid of the Federal Government. I know we have trouble on welfare and handing down edicts that cost us

millions of dollars and gave us rigidity, but I think in this area where we have to have all the help and support that we can possibly get because of the powerful array of economic forces that would destroy these values, I really welcome the role that the Federal Government has been pictured in this bill.

Senator McCLURE. I appreciate your statement. I am not sure that I totally agree with it, but I appreciate the frankness with which you expressed it.

One other thing that was alluded to earlier, it is a very difficult one and requires State action primarily, something that I don't believe the Federal Government can dictate, that is attitudes on real estate taxes and tax patterns. Oftentimes, the taxation by the State or the instrumentality of the State is the motivating force that requires land use change, because it becomes uneconomic in its former use. Now, in what way do you feel that the Federal Government can be involved in changing that pattern?

Governor McCALL. I just have one further thought, Senator, on the last one. It just occurred to me that our bill at the State level requires the State commission to approve the guidelines that a county uses. So I think I would be entirely consistent in saying there ought to be some effort to have a consistency that would produce a uniform result in our land use across the country. With actually the hands and work coming from the more local level with the inducement coming from above.

Now, this question about the taxes changing the pattern because you can't afford to keep your house, we are moving in a very forthright way in our State. We are taking 95 percent of the operating costs of our schools off homes and we are putting it on the income tax. We are putting part of it on business, 50–50 split between individuals and business. This reflects what a man can pay because it reflects what the man earns. The minute you get old like I am getting, and you don't have any money, your earning power is down and your house taxes are down. We have tax relief that runs on schools up to 88 percent under this plan. What I am saying is that we are trying to get rid of these forces that tend to be confiscatory and tend to manipulate the handling and management of land in the way that you worry about and I worry about, too.

We also have ways that farmers could use their land and ways that golf courses and parks could be preserved. The farmer naturally would be in a green belt situation so that he pays farmland taxes, but if he should suddenly sell it at 10 times the farm value then he picks up back taxes. We do make every effort to stabilize the unordered change in use of land through the pressure of taxation in our State as much as we can.

Senator McCLURE. Is the Federal Government properly involved directly in this pattern of real estate taxation or is that a State function, in your opinion?

Governor McCALL. Well, I don't know whether this is responsive, I think it is. When we heard about revenue sharing, it was my message in 1971 to the legislature to take all of the State revenue sharing and put it in to a tax offset so that pressure would be lessened on the homes of the people of Oregon. If you want to question me more closely on that, I may have missed your meaning, I didn't——

Senator McCLURE. No, I think that is responsive. There are people

who assume the Federal Government ought to move in to a direct substitution for the real estate taxes and federalize the support of these institutions. I wonder if you agree with that point of view, or whether you think it is still a State prerogative and problem?

Governor McCall. I never heard that philosophy espoused; I don't have any view on it. But I would say offhand, I share your alarm at that kind of a situation.

Senator McClure. Thank you very much. I think your testimony this morning has been most stimulating and rewarding and your ability to articulate the issues is borne out by the fact that we have kept you here for 1 hour and 40 minutes so far. Thank you.

The Chairman. Thank you, Senator McClure and Governor; we appreciate your testimony. You have been very helpful and you have added substantially to our understanding of this problem, especially coming from a Governor who has taken such a keen and active and, I think, constructive interest in trying to resolve the key environmental problems, which is what happens as we use our land. Land use is the foundation of everything, isn't it, every aspect of the environment. So we are most grateful to you; thank you.

Governor McCall. Thank you; it has been a privilege, and we will help you in any way we can in drumming up interest, in trying to explain the purpose of the bill.

One further thought as I leave; we find so many misconceptions about bills like this. I rode east with a cranberry farmer who said you can say there is a tree cut out in the middle of that field, we have to save that tree.

The Chairman. The fear psychosis. Thank you very much.

Governor McCall. Thank you.

The Chairman. Now, Mrs. Spellman, countywoman from Prince Georges County, had a noon appointment. She is now 15 minutes past due.

But if you can summarize, please do so; it will be a tremendous help.

Mrs. Spellman, welcome to the committee and we deeply appreciate your coming here. You are president of the National Association of Counties and are representing NACO.

We are sorry for the delay, but it could not be avoided.

Mrs. Spellman. I fully understand; I sit in our county in the very same position and meetings and hearings have a way of going a lot longer than we expect. I do have with me today Mr. William E. Roach, the planning director of Summerset County, N.J. and the president of NACO's national association of planning directors, and Mr. Larry Naake, legislative representative on NACO's staff. All of us will be available to answer questions at the conclusion of my formal statement.

STATEMENT OF HON. GLADYS SPELLMAN, COUNCILWOMAN, PRINCE GEORGES COUNTY, MD., AND PRESIDENT OF THE NATIONAL ASSOCIATION OF COUNTIES, ON BEHALF OF NACO

Mrs. Spellman. It is indeed a pleasure for me to appear before your committee on a matter of such great importance to the future of land use planning and environmental quality, as well as the very structure and powers of counties and other local governments throughout the United States.

As you might recall, Mr. Chairman, NACO testified before your committee in June of 1971 on this same issue. At that time, counties supported the concept and goals of a national land use policy. We still do. However, much has happened since June of 1971, both with respect to the contents of the bill and with respect to land use planning in State and local governments throughout the country.

It is our opinion that the bill before your committee has improved immensely since debate first started on the measure some 3 years ago. We commend you, Mr. Chairman, your committee, and your staff for these improvements.

While this improvement process has been taking place with respect to a national land use policy, many States have also been moving ahead in this area. We have read with interest land use proposals in the States of Michigan, New Jersey, Rhode Island, Virginia, and in my own State of Maryland.

As you well know, counties and other local governments have very mixed emotions about the entire issue of land use planning. In many respects, our house is divided. On the one hand, most of our counties want to move ahead in the logical planning of the use of our land and the preservation of our environment. They see the need to coordinate planning and activities with other units of general purpose local government. They realize that planning and environmental problems do not end at city boundaries or county boundaries.

On the other hand, there is great concern, and rightfully so, that we are not preserving the historical and proper role of local governments in the planning, zoning, and land use fields.

In Maryland, we are faced with this very conflict. Many of us see the need to improve the local planning process in those counties where it is inadequate. But, at the same time, we do not want the State to supersede our planning authority, especially in counties where we have developed the legal capacity and expertise to approach and solve land use problems. We have a way to go, but we have accomplished much in a few short years.

In Prince Georges County, we spent many hard years of developing this capacity and would not relish a State bureaucracy preempting our land use authority and perhaps destroying much of what we have accomplished.

I can tell you in the last election the areas of criticism of the local officials all centered around the frustration of services supplied, not by the county but by the State and by State controlled agencies.

It is a fallacy to think that the States can do a better job than the local government and you mentioned Maryland, I was especially interested because the State itself is responsible for a great deal of this land misuse that has been discussed here today by providing tax shelters to developers.

They have enabled them to amass land and hold it and use the farmland assessment shelter. That is just one area.

We in our county have had to fight the courts to enable us to make decisions. There has been as much land zoned by the courts who felt if a man wanted a filling station he should have one, and we had a great deal of difficulty in finally amassing enough case histories to enable the local governing body to make the decision.

We had an enormous amount of trouble getting from the State the control over where sewer lines were going to go and we all know where sewer lines go, that is where the land is going to develop.

We had trouble getting the bicounty state planning agency to a point where we had control over that. Only recently in the last couple of years have we finally gained control over these agencies and now the county is ready because of herculean measures we have taken, we are now ready to do comprehensive zoning.

We can do our planning, look at the map that is imminent now and then be able to say this is the way the land is going to be zoned. We have worked up that kind of expertise.

There was some talk about urban sprawl. Until you are able to do this comprehensive planning that I am discussing, you will have urban sprawl, because as Senator Hansen was saying a while ago, people don't want apartments near them. When you have a single family home, you want another single family home and another and another and that is what creates urban sprawl.

With proper planning we will be able to take care of that question of urban sprawl. I want to point out that it was when we were finally able to wrest from the State the full control over our destiny, that the county authorities blanked out over 50 percent of our land and said within the next 10 years there will be no development of these lands, and up until that time the developers were able to go in everywhere as long as the State still had control.

They were able to go anywhere in our county and do their building. So I want to point out to you that it is a fallacy to think when you send it up to the State level you are automatically creating better land-use planning.

I served, and had the great honor of serving on the advisory commission of intergovernmental relations. We found that the States were a pretty weak unit of government. It just does not hold true that the further from the people that you go, and send the authority and responsibility the better use of that authority and responsibility you are going to get.

In my own county I can tell you that some of the lands that are being most deperately misused are lands held by the Federal Government. These are Federal lands which they attempt to use without any regard for our own plans. So I just want to point out that is awfully important, that we recognize that where local governments are able to, and I am talking about general purpose governments, not every little township and every little podunk in the road, but general purpose governments which are close to the people and which have to answer to them, should be given that right to do what needs to be done in their own areas, with, of course, the proper umbrella over them.

I want to point out that we wholeheartedly endorse the concept and roles in this legislation.

I have some pretty good credentials there, I am concerned about the environment to such an extent that I have helped the young members of my family in purchasing lands at considerable sacrifice to them and to myself, lands which we have covenants to keep in their natural state. Thousands of acres to be kept in their natural state, for which we are paying, but we believe if we care about the environ-

ment that we ourselves have to make that same sacrifice, not just ask the Government to do so.

So I come with pretty good personal credentials. But because we want to see this concept really carried out, we feel we have to address ourselves to three major concerns in the process.

One is the planning process. The first concern that has emerged is the need for a very strong role for counties and other general purpose local governments in the decisionmaking and planning process that must take place in developing any State land use program.

We are quite pleased to note that a number of significant changes have taken place in your proposed legislation to provide such a role. We note that you have included an advisory council composed of locally elected officials to advise any State land use planning agency that has been established under this Act. We urged such a provision in 1971, and applaude its inclusion.

Implementation, however, is another issue. As in 1971, we again urge a much stronger role for counties and other general purpose local governments in the implementation of any state land use plan. I am aware that there is a preference in the bill for local implementation of the land use programs. However, we would again strongly urge that the legislation be amended to mandate the use of local governments have the authority to administer and enforce land use plans and regulations.

We are not suggesting that State constitutions be violated. We are merely suggesting that where local governments have both the statutory authority and the resources to perform such functions, that they be utilized.

I do not believe that there has been adequate recognition of the fine planning and land use enforcement that has taken place in many counties and cities across the Nation. We should reward this progress where it exists and encourage and strengthen local programs where they are adequate. We should not destroy what has been accomplished.

We envision that any State plan would be composed primarily of broad guidelines and criteria. The detailed preparation of land use plans should be accomplished at the county and local government level. Statewide and regional considerations should certainly be important in preparing these local plans, but we should not ignore the expertise and many years of experience that exist in our local planning agencies. After counties and other local governments have prepared detailed land use plans, councils of governments and State authorities should then review these plans for regional and State implications and consistencies. Once these plans have been approved and adopted, it seems appropriate and necessary to use city and county planning agencies to implement the approved plans.

Further, we recommend that, where and when general purpose local governments are used for planning and implementation purposes, there be a mandatory pass-through of funds to local governments for both planning and implementation purposes.

If the program is to be successful and to work properly, this is an extremely important provision. As we have discovered in other Federal assistance programs, the States, too often receive Federal funds, utilize their local governments to carry out or implement the Federal programs, as in their right, but do not send the funds down to local governments along with the responsibility.

We certainly believe that there is an important role for areawide or regional governments in the planning and review segments of a State land use program.

However, we do not believe that areawide or regional agencies should in any way be involved in the implementation of such a program. This would certainly go counter to our goal, and hopefully yours, of strengthening general purpose local governments throughout the United States.

Counties accept the fact that there is a need for considering areawide implications in making land use decisions that affect our environment. This consideration, however, does not necessitate the provision of additional operating powers to multijurisdictional planning agencies.

In this light, we have two recommendations for changes in the legislation. First, we would suggest that areawide planning agencies not be considered as eligible local government for the purpose of implementing a State land use plan.

Areawide planning agencies are not general purpose local governments. They do not and should not have the authority to provide a wide range of public services to citizens. This is the role of general purpose counties and cities.

Councils of governments and other areawide planning agencies are, on the other hand, only voluntary coordinating bodies and should only review land-use plans for areawide implications and consistencies.

Second, we strongly urge that where multijurisdictional agencies are used for planning and review purposes, they be the so-called council of government type which are established by the elected local officials in an area and composed primarily of such officials. We suggest that the bill mandate the use of these types of areawide agencies.

These then are the provisions that we in county government would recommend for inclusion in any national land use policy. We believe that they reflect a changing mood on the part of the American citizens and their elected representatives for a more rational approach toward land use. They also reflect the belief that all levels of general purpose government have a role in land-use planning, and that any planning process should start at the local county or city level and flow upward through areawide, State and Federal Government.

We thank you very much for this opportunity to present our views. We have prepared suggested language for our proposed amendments for you and your staff and we would be most pleased to work with you in further detailing our suggestions.

Senator FANNIN. Thank you very much, Mrs. Spellman, we certainly appreciate the remarks that you have made.

You have very capably covered your statement. I just wanted to ask a couple of questions.

As I understand, you do favor passage of S. 268 with the amendments?

Mrs. SPELLMAN. Yes.

Senator FANNIN. This is a preemption of local authority by the Federal and State Governments?

Mrs. SPELLMAN. As it stands now I would feel that it would be.

Senator FANNIN. Do you have a copy of the bill there?

Mrs. SPELLMAN. Yes.

Senator FANNIN. On page 24, at the bottom of the page, I just want to clarify your exact position. If you will refer to the bottom of the page, implementation by local governments pursuant to criteria and standards established by the State, such implementation will be subject to State administration review with the State authority to disprove such a limitation where it would fail to meet such criteria and guidelines.

Then it goes on about the direct State land-use planning and implementation.

Now, any implementation shall include the authority of the State—and it goes on to elaborate there.

Do you feel this technique is satisfactory?

Mrs. SPELLMAN. If we mandate the fact that the decisionmaking should be on the local level unless they fail to take that authority: yes.

How much time are we giving local officials to get this underway?

Senator FANNIN. Of course, that would be up to the State, but the timing is from the standpoint of adoption of a program by the State. Of course, many of the States move very slowly, some of them have moved quite quickly.

After a 3-year period the Federal Government will move in for the first time to check on what is being done. Then there would be 2 additional years to determine if the State property completes the program.

Mrs. SPELLMAN. That certainly make sense to me. I would buy that without any problem.

Senator FANNIN. Well, thank you very much.

Mrs. SPELLMAN. I would like, before we leave, to introduce Mr. Roach who, I am sure, has a couple of comments that he would like to make on the subject.

Mr. ROACH. I would just like to mention, Senator, that many, many counties in this country have long years of planning experience. They have professional staff, many of us have prepared comprehensive land-use plans taking into account environmental concerns expressed by this bill.

We have a good rapport with our State and State planning agencies. I think the Federal frame of reference within which we can work would do much to strengthen planning on the county level.

I think county planning efforts are one step ahead of the higher levels of Government. One of the things we want to keep in mind is—this has been brought out by many studies—hopefully some of the pressure from population growth is easing off. Hopefully the pressure trends will decrease but this does not excuse us from planning to achieve the goal set forth in this bill.

One phenomenon that is impacting much of the country is the second home, vacation home developments outside of the urban areas and this is where this bill would be of extreme importance.

Senator FANNIN. I understand it is the intent of the bill to adopt procedures which will give the local government the opportunity to fully present their positions to the State. Subsequently, procedures will be adopted for all of the different areas of government.

Of course, as you say, there are areas. Which will not be as easy to cover such as those coming under counties or some other municipal area.

Mr. ROACH. That is correct.

Mrs. SPELLMAN. We would hope that as you work on this legislation, that you bear in mind that many of us have some very good expertise in this, we have lived with it, we have bled with it and much of the problems of controlling land use properly has come from the fact that we were governed too closely by the State.

We, in our county, were never able to get the provisions that we asked the State for; the authority to force developers to provide school lands. We were able to get only a very small, an infinitestimal amount of open space for recreation in the zoning process.

These were things that had we been able to control them locally we certainly would have required. So I want to point out, this is a strong word, that the guts are very often right there with the people on the local level, because it takes guts to serve on the local level. That is where the action is and that is where the criticism is.

Senator FANNIN. Well, thank you, you have expressed yourself very eloquently. Thank you for being with us today.

Mrs. SPELLMAN. Thank you very much.

[The prepared statement of Mrs. Spellman follows:]

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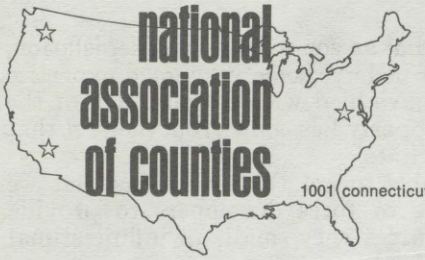

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STATEMENT

ON BEHALF OF THE

NATIONAL ASSOCIATION OF COUNTIES

BY

GLADYS NOON SPELLMAN, COUNCILOR

PRINCE GEORGE'S COUNTY, MARYLAND

ON

S. 268

LAND USE POLICY AND PLANNING
ASSISTANCE ACT OF 1973

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

February 7, 1973

Mr. Chairman and Members of the Committee:

I am Gladys Noon Spellman, Councilor from Prince George's County, Maryland, and President of the National Association of Counties (NACo). With me today are William E. Roach, Planning Director of Somerset County, New Jersey and President of NACo's National Association of County Planning Directors, and Larry Naake, Legislative Representative on NACo's staff. All of us will be available to answer questions at the conclusion of my formal statement.

It is indeed a pleasure for me to appear before your Committee on a matter of such great importance to the future of land use planning and environmental quality, as well as the very structure and powers of counties and other local governments throughout the United States.

As you might recall, Mr. Chairman, NACo testified before your Committee in June of 1971 on this same issue. At that time, counties supported the concept and goals of a National Land Use Policy. We still do. However, much has happened since June of 1971, both with respect to the contents of the bill and with respect to land use planning in states and local governments throughout the country. It is our opinion that the bill before your Committee has improved immensely since debate first started on the measure some three years ago. We commend you, Mr. Chairman, your Committee and your staff for these improvements.

While this improvement process has been taking place with respect to a National Land Use Policy, many states have also been moving ahead in this area. We have read with interest land use proposals in the states of Michigan, New Jersey,

Rhode Island, Virginia, and in my own state of Maryland.

As you well know, counties and other local governments have very mixed emotions about the entire issue of land use planning. In many respects, our "house is divided". On the one hand, most of our counties want to move ahead in the logical planning of the use of our land and the preservation of our environment. They see the need to coordinate planning and activities with other units of general purpose local government. They realize that planning and environmental problems do not end at city boundaries or county boundaries.

On the other hand, there is a great concern (and rightfully so) that we are not preserving the historical and proper role of local governments in the planning, zoning, and land use fields.

In Maryland we are faced with this very conflict. Many of us see the need to improve the local planning process in those counties where it is inadequate. But, at the same time, we do not want the State to supercede our planning authority, especially in counties where we have developed the legal capacity and expertise to approach and solve land use problems. We have a way to go, but we have accomplished much in a few short years. In Prince George's County we spent many hard years developing this capacity and would not relish a state bureaucracy pre-empting our land use authority and perhaps destroying much of what we have accomplished.

All of us certainly want to strengthen our ability to deal with the land use problems of a growing nation. But we also want to strengthen the ability of

county and other general purpose local governments to deal with these problems. Counties do not think these two goals are mutually exclusive. We can accomplish both if the legislation before you is only slightly modified.

I have said that much has happened in the land use field during the two short years since we testified on this issue. Because of the many state land use proposals, counties and states have had more experience dealing with the problems involved in establishing a mechanism to develop effective land use programs. Our contact with counties around the country shows that this experience has given rise to three major concerns and problem areas. I would like to share these concerns with you and relate them to the "Land Use Policy and Planning Assistance Act of 1973".

Planning Process

The first concern that has emerged is the need for a very strong role for counties and other general purpose local governments in the decision-making and planning process that must take place in developing any state land use program. We are quite pleased to note that a number of significant changes have taken place in your proposed legislation to provide such a role. We note that you have included an advisory council composed of locally-elected officials to advise any state land use planning agency that has been established under this Act. We urged such a provision in 1971, and applaude its inclusion.

Implementation

Implementation, however, is another issue. As in 1971, we again urge a much stronger role for counties and other general purpose local governments in the implementation of any state land use plan. I am aware that there is a "preference" in the bill for local implementation of the land use programs. However, we would again strongly urge that the legislation be amended to mandate the use of local government agencies for specific planning and for the implementation of plans, where such general purpose local governments have the authority to administer and enforce land use plans and regulations.

We are not suggesting that state constitutions be violated. We are merely suggesting that where local governments have both the statutory authority and the resources to perform such functions, that they be utilized. I do not believe that there has been adequate recognition of the fine planning and land use enforcement that has taken place in many counties and cities across the Nation. We should reward this progress where it exists and encourage and strengthen local programs where they are inadequate. We should not destroy what has been accomplished.

We envision that any state plan would be composed primarily of broad guidelines and criteria. The detailed preparation of land use plans should be accomplished at the county and local government level. Statewide and regional considerations should certainly be important in preparing these local plans, but we should not ignore the expertise and many years of experience that exist in our local planning agencies. After counties and other local governments have prepared detailed land use plans, councils

of governments and state authorities should then review these plans for regional and state implications and consistencies. Once these plans have been approved and adopted, it seems appropriate and necessary to use city and county planning agencies to implement the approved plans.

Further, we recommend that, where and when general purpose local governments are used for planning and implementation purposes, there be a mandatory pass-through of funds to local governments for both planning and implementation purposes. If the program is to be successful and to work properly, this is an extremely important provision. As we have discovered in other federal assistance programs, the states too often receive federal funds, utilize their local governments to carry out or implement the federal program (as is their right), but do not send the funds down to local governments along with the responsibility.

Area-Wide Considerations

We certainly believe that there is an important role for area-wide or regional governments in the planning and review segments of a state land use program. However, we do not believe that area-wide or regional agencies should in any way be involved in the implementation of such a program. This would certainly go counter to our goal, and hopefully yours, of strengthening general purpose local governments throughout the United States.

Counties accept the fact that there is a need for considering area-wide implications in making land use decisions that affect our environment. This consideration, however, does not necessitate the provision of additional operating powers to multi-jurisdictional planning agencies.

In this light, we have two recommendations for changes in the legislation. First, we would suggest that area-wide planning agencies not be considered as eligible local government for the purpose of implementing a state land use plan. Area-wide planning agencies are not general purpose local governments. They do not and should not have the authority to provide a wide range of public services to citizens. This is the role of general purpose counties and cities.

Councils of governments and other area-wide planning agencies are, on the other hand, only voluntary coordinating bodies and should only review land use plans for area-wide implications and consistencies.

Second, we strongly urge that where multi-jurisdictional agencies are used for planning and review purposes, they be the so-called "council of government" type which are established by the elected local officials in an area and composed primarily of such officials. We suggest that the bill mandate the use of these types of area-wide agencies.

These then are the provisions that we in county government would recommend for inclusion in any national land use policy. We believe that they reflect a changing mood on the part of American citizens and their elected representatives for a more rational approach toward land use. They also reflect the belief that all levels of general purpose government have a role in land use planning, and that any planning process should start at the local county or city level and flow upward through area-wide, state, and federal governments.

We thank you very much for this opportunity to present our views. We have prepared suggested language for our proposed amendments for you and your staff and we would be most pleased to work with you in further detailing our suggestions.

Senator FANNIN. Our next witness is the Honorable Wes Wise, Mayor of Dallas, Tex., speaking on behalf of the National League of Cities' Committee and the U.S. Conference of Mayors.

STATEMENT OF HON. WES WISE, MAYOR OF THE CITY OF DALLAS, TEX.; CHAIRMAN, NATIONAL LEAGUE OF CITIES' COMMITTEE ON ENVIRONMENTAL QUALITY, ON BEHALF OF THE NATIONAL LEAGUE OF CITIES AND THE U.S. CONFERENCE OF MAYORS

Mr. WISE. Mr. Chairman, members of the committee, my name is Wes Wise. I am mayor of the city of Dallas, Tex., and serve as chairman of the Committee on Environmental Quality of the National League of Cities. On behalf of the National League of Cities and the U.C. Conference of Mayors, we appreciate this opportunity to testify on S. 268, the National Land Use Policy and Planning Assistance Act of 1973.

The National League of Cities consists of and is the national spokesman for approximately 15,000 municipal governments in all 50 States and Puerto Rico. The U.S. Conference of Mayors includes virtually all cities with a population in excess of 30,000. Member cities are represented by their elected chief executives—the mayor.

The positions of the National League of Cities and U.S. Conference of Mayors on national land use planning and S. 268 may be summarized as follows:

(1) A national growth policy is a necessary precondition to a national land use bill, to give national policy direction for State and local land use plans;

(2) We support a Federal-State-local partnership for land use planning, particularly for land use problems that have effects beyond the boundaries of cities;

(3) Cities should exercise their traditional land use and zoning authorities subject to State standards and guidelines for land use decisions of unique statewide concern;

(4) States should give priority to opportunity areas of statewide concern;

(5) Cities and statewide associations of cities must be eligible for land use planning and implementation assistance;

(6) A program of State and Federal financial assistance to local governments should be initiated to increase local capacity to plan and manage the environment;

(7) Provision must be made in State land use plans for regional solid waste disposal sites;

(8) Provision must be made for consideration of the effect of State and Federal land use decisions on the local property tax base, with compensation for local government losses;

(9) A program of State and Federal assistance to local governments should be initiated to enable them to acquire and preserve urban and urbanizing land for open spaces, agriculture, or other priority uses;

(10) Cities should be encouraged and allowed to exercise extra-territorial and interterritorial powers.

Mr. Chairman, we as elected public officials have a responsibility to protect and enhance the public health, welfare, and safety. This

must also be the basic goal for environmental quality. To provide this protection necessitates adoption of a dual environmental strategy: protection of man's environment from further degradation, and improving the quality of the total environment.

Toward this goal, the Congress has enacted basic legislation for water, air, and noise pollution control, for solid waste management and resource recovery, for ocean dumping and coastal zone management. To provide a broader Federal overview, the National Environmental Protection Act was enacted in 1969.

However, environmental quality cannot be so discreetly described, nor so conveniently managed. Each environmental media has an impact upon the others. Each in turn will impact housing, transportation, economic development—the whole range of activities conducted every day by all levels of governments.

This complex interrelationship and interface is now being recognized, in Congress and throughout the Nation. We can no longer afford the luxury of taking each environmental program in isolation.

With this introduction, the Land Use Policy and Planning Assistance Act of 1973, S. 268, presents itself as a significant point of departure from the trend of specialized programs. It has the potential to be a focal point for establishing or strengthening institutional arrangements to bring together the numerous developmental—and conservatory—actions at the appropriate levels of government.

The National League of Cities and U.S. Conference of Mayors support a land use planning partnership among Federal, State, and local government, particularly for land use problems that have effects beyond the jurisdiction and capacity of local governments. The National Land Use Policy and Planning Assistance Act may well be, as its sponsor and vigorous champion Senator Jackson has asserted, the most significant environmental legislation ever before the Congress.

In addition to the specific comments to S. 268 we shall make, the National League of Cities and the U.S. Conference of Mayors urge that several points of concern merit consideration during this committee's deliberations on land use planning. They address national issues that we feel transcend the ability of local governments to resolve by themselves. We therefore urge at this congressional forum that these issues be recognized as national issues compelling Federal and State governmental response.

(1) NATIONAL AND REGIONAL SOLID WASTE DISPOSAL SITES

Will Rogers is often quoted as describing our present perception of land: "Buy land; they ain't maikng any more of it."

This may be our perception, but it isn't the fact. Our Nation generates a billion pounds a day of solid wastes. Some of it is burned, some landfilled, and most solid waste is dumped on the land. Aside from the waste of resources that could be reclaimed and recycled, and the energy that could be obtained from solid wastes, open dumping is a major source of water pollution and is an eyesore as well as a breeder of disease vectors.

Land disposal of solid wastes and solid waste residues presents a major environmental asset. It can be the means of literally making more land through land reclamation.

The difficulty is that the land most available for new landfills and the lands most in need of reclamation are usually outside the major urban areas which have little land.

The mismatching of land and resources forces cities to internalize solid waste management, utilizing high technology, high capital intensive processes. It also requires the use of scarce, expensive, high-density urban land.

There are enough stripmined areas within the Northeast corridor—Boston to D.C., and including Chicago—to accommodate 50 years of solid waste from cities within that corridor. Combined or multipurpose facility siting could couple land reclamation (for example, limited farming in 5 years) with energy generation from solid wastes as well as resource recovery.

The obstacle to all of this is State laws which prohibit or severely constrain transporting solid wastes across political boundaries and the locating of sanitary landfills and disposal processes.

The problems of solid waste disposal present an excellent example of a problem that transcends the ability of local governments, An essential element for a State land-use plan should be consideration of reclaimable lands and constraints that exist and should be eliminated for transporting and disposing of solid wastes. Provision should also be made for national and regional solid waste disposal sites, consistent with applicable Federal, State, and local regulations.

The National League of Cities and the U.S. Conference of Mayors will make a more comprehensive and detailed presentation on the solid waste crisis that is now confronting numerous cities during the anticipated congressional oversight hearings on the Solid Waste and Resource Recovery Acts.

However, the land-use elements of the solid waste crises is something that is related to the problems to which S. 268 is addressed, and therefore we strongly urge this committee to include it in the bill ultimately reported.

(2) COMPREHENSIVE ENVIRONMENTAL PLANNING AND MANAGEMENT GRANTS

The problems just outlined regarding solid wastes illustrate the difficulties of considering each environmental media in isolation. Land-use planning will require very sophisticated analysis leading to governmental decisions on policy alternatives—trade offs—between several meritorious positions. We cannot treat land-use planning as just another categorical program, nor as another layer of bureaucracy superimposed upon but unrelated to existing governments and bureaucracies.

Federal agencies are required to go through an impact analysis pursuant to the National Environmental Protection Act of 1969. Many States and cities already follow this Federal initiative. The need for such analysis at the local level will grow as a result of passage of the National Land-Use Policy and Planning Assistance Act of 1973.

The National League of Cities and the United States Conference of Mayors propose that Federal funds be available to cities to conduct programs of environmental planning and management.

This would include environmental impact statements within a city and metropolitan area; developing comprehensive environmental management capacity within the city, such as a municipal department

of the environment, or Environmental Planning and Management Administration; a computer modeling system for assessing the trade offs in the environmental and other decisionmaking processes; and unified or integrated grant applications and work statements. Cities should develop capacity in cost effectiveness and cost/benefit analysis to support environmental decisionmaking.

We recognize that it may be argued environmental decisionmaking is no different from any other type of governmental decisionmaking process. We support general management and executive capacity development assistance to local governments. We would argue that the environment is a subset of that broader governmental function. The technical requirements and governmental regulations and mandates, as well as the primacy that we give environmental matters, all merit distinguishing and keeping a separate environmental planning and management capacity.

We also feel that these hearings on national land-use planning and S. 268 is an appropriate forum for proposing such an integrated environmental planning and management structure because that would be the ultimate product required of cities if S. 268 becomes law. It would be only prudent to anticipate the new obligations that will be necessitated by this act and provide for them now.

As a minimum, comprehensive environmental planning and management should be encouraged and an activity eligible for funding under S. 268. Additionally, funds could be earmarked, or a separate program established to assist local governments to meet the purpose of the bill.

(3) CITIES SHOULD BE ENCOURAGED AND ALLOWED TO EXERCISE EXTRATERRITORIAL AND INTERTERRITORIAL POWERS

Discussing "Optimal Development Within Metropolitan Areas," the National Municipal Policy of the National League of Cities states, in part:

> [Uncontrolled development at the unincorporated fringes of cities and in unincorporated areas within cities is detrimental to health, safety, and orderly urban development.] Where counties do not provide planning, zoning, building codes, or subdivision regulations, either counties must assure these responsibilities or municipalities should be permitted to exercise extraterritorial powers of this kind over adjacent unincorporated areas. [Adequate legal authority should be provided in State laws for central cities to annex and to exercise interterritorial powers in urbanizing fringes to permit areawide planning and long-term investment in public facilities essential to the urban community.] Federal and State laws which tend to create or favor single purpose and other special districts should be revised so as to assign the performance of new public services or the extension of old ones to existing units of general purpose local government.

should be included as elements for a statewide land-use planning program.

(4) CITIES SHOULD BE AUTHORIZED AND ASSISTED IN LAND ACQUISITION AND PRESERVATION

Cities should have authority to engage in advance land acquisition, or land banking. They should also receive State and Federal assistance to overcome the fiscal dependence on property tax productive land uses and enable cities to then make decisions on broader public policy grounds. As noted urbanologist Anthony Downs has written:

Any attempt to exert significant public influence over the nature, magnitude, or physical form of urban growth requires public ownership or other direct control of a significant part of the land in major metropolitan areas, especially on their own growth peripheries.

The National Municipal Policy of the National League of Cities:

A national program for anticipating the growth of existing urban areas through aiding in the assembly of substantial acreage under the control of local general purpose governments for long-term development should be undertaken. Federal grants should be provided to allow local governments to acquire underdeveloped or undeveloped land, or land of critical importance to future development strategies for long-term development purposes. This approach to controlling future urbanization not only can curb unwanted development, but will also return to the local community the windfall profits from the increasing value of underdeveloped land in rapidly urbanizing areas.

Local governmental and acquisition authority is urged by several major reports on land use: Urban and Rural America: Policies for Future Growth. Advisory Commission on Intergovernmental Relations; Building the American City (Douglas report). The National Commission on Urban Problems; A Model Land Development Code. American Law Institute; Report of the Task Force on Housing and Urban Development. The Canadian Federal Task Force on Housing and Urban Development; New Directions in Connecticut Planning Legislation. American Society of Planning Officials.

The National League of Cities and the U.S. Conference of Mayors therefore urge that S. 268 makes explicit the public policy of the United States in supporting advance land acquisition by local governments to further the purposes of an approved land use law or regulation. For example, acquisition of agricultural lands to preserve them for agricultural use.

We also urge that State and local land use plans include provision of advance land acquisitions as one means to implement a State or local land use plan.

Subsidies should be provided to enable them to implement an approved program of advanced land acquisition, furthering the purposes of the National Land Use Policy and Planning Assistance Act. A city may wish to keep land as an open space area, but will be under intense pressure to develop it, a pressure keenly felt from within as the city finance staff will point to no property tax coming in. To develop the land may not be sound land use; it may also require city expenditures on services for the developed areas. A subsidy program could enable the city to withdraw this land from tax-productive use.

Our comments today should not be interpreted as a complete endorsement of S. 268. The National League of Cities and the U.S. Conference of Mayors reiterate now, as we did during our testimony on S. 632 and S. 932 during the 92d Congress and again during the floor debate on S. 632, that the Land Use Policy and Planning Assistance Act is only a part of a greater strategy. The precondition to a national land use policy, or a national settlement policy, or even to a national energy policy, must be a national growth policy. Without national objectives to give substance to the broad outlines of policy contained in S. 268, governmental efforts to meet our environmental quality goals will continue to be a fragmented effort, failing to fulfill neither its real potential nor any compelling national need.

However, we are constrained by the structure of the Congress, just as you are constrained by your committee's jurisdiction. Therefore,

having attempted to place land use planning in some degree of perspective, we shall proceed to the substance of S. 268 now before this committee.

When the National League of Cities and the U.S. Conference of Mayors testified on land use planning legislation during the last Congress, we enumerated nine key points that should be included in any national land use legislation.

We should again enumerate those key principles, for they remain sound. Not all these points were included in the bills we testified upon before. We are pleased that, in the process of reviewing, debating, revising, and amending S. 632 in the last Congress, many of these points were incorporated in S. 268.

We shall review each point with specific reference to the provisions in S. 268. We shall make recommendations, where appropriate, for amendments to remedy what we see as defects. We shall also propose several additions that we hope would make S. 268 a more effective means for achieving the goals and policies of the act, and for meeting the policy positions of the National League of Cities and the U.S. Conference of Mayors.

First, Federal assistance to State and local land use planning programs.—Title III of S. 268 establishes a program of assistance to the States to develop and administer a State land use program. No funds are provided for local land use planning. This is a serious defect. We recognize that the objective of the bill is to encourage and develop State land use planning capacity, a capacity now found lacking. We also recognize the budgetary restraints now before us.

However, we can suggest two situations where local governments should be eligible for funding. The first would be where the Governor declines to act within the time limits or requirements of the bill. Why should cities suffer because of a State's intransigence? A city or regional organization of local governments may be ready and willing to engage in planning for their area, but lack funds. Therefore, we recommend that there be provision for direct Federal grants for local governments where the State fails to comply with the requirements of law, and where such local or regional plan would further the purposes of the act. We recommend that S. 268 be amended as follows:

Insert the following new subsection: Between page 17, line 19 and 20:

> "(f) The Secretary is authorized to make grants under this section to a local government, 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, if the Secretary finds that the State has not developed an adequate statewide land-use planning process required by section 302 of this title: *Provided*, That if the State completes such a program the authority of this subsection shall terminate."

This amendment corresponds to a provision in the Coastal Zone Management Act that passed the Senate last Congress, although it was deleted in conference.

Second, a State may wish to pass through its Federal funds to local governments or delegate land-use functions to local governments. While not prohibited, it would not be encouraged. In fact, S. 268 is

silent on this issue, even though it encourages the employment of land-use controls by local governments. We recommend the S. 268 be amended as follows:

Insert the following new subsection: Between page 22, between line 21 and 22:

"(c) The State may allocate to a local government and/or area-wide 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 a portion of the grant under this section, for the purpose of carrying out the provisions of this section."

Insert the following new subsection: Page 28, after line 24:

"(g) The State may allocate to a local governmental or area-wide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1968 and/or title IV of the Intergovernmental Cooperation Act of 1968 a portion of the grant under this section, for the purpose of carrying out the provisions of this section."

These amendments correspond to sections 305(g) and 306(f) of Public Law 92–583, Coastal Zone Management.

Second, Federal encouragement of general statewide land use planning goals.—The Land Use Policy and Planning Assistance Act does not require that States engage in comprehensive planning, or that States preempt local zoning and land use functions. It focuses on only four categories of critical areas and uses of more than local concern, Implementation of the State land use program would be limited to these critical areas and uses. Such a directive to the States is consistent with both NLC and USCM policies. We therefore support sections 303(b) and (d) which does provide positive assurances of local government's primarily role, as Senator Jackson has stated, "in traditional responsibility of local government for land use management."

Third, local elected officials should have a major role in the development of the State plans.—We are pleased that Senator Jackson sponsored amendments to S. 632 during its floor consideration to assure that local governments will be fully involved in the planning for land uses of statewide concern while assuring the continued primary role of local governments in local land use decisions. All too often major land use decisions that effect cities are effected without their consultation or involvement. S. 268 can become a more effective tool for coordinating State and local land use ativicties of more than local concern. At the same time, the primary responsibility for local land use decisions under S. 268 would continue to be placed in the hands of elected local officials, at the level of government closest to the people.

We therefore strongly support the requirement that the State land use process and program assure the representatives of local governments receive full information, and participate in the development and revisions of the process and program, and the guidelines, rules, and regulations (§§ 302(a)(13), 303(a)(f)). We also strongly urge that definitions be added. The threshold decision will be the definitions of the critical areas and uses. Sound administration warrants ensuring the cities have full and effective participation, from the very start: The

definitions of what constitutes those critical areas and uses over which the State could override local authority.

We strongly support requiring a State advisory counsel of chief elected officials of local governments (§ 302(b)(7)). It will serve the State, as well as local governments, to have an advisory body to give crucial guidance at all stages of the land use planning process. Without such a formal mechanism the State agency could find itself in a very static situation; feedback and review will create the dynamic process envisioned by S. 268's sponsors.

An administrative appeals requirement (§ 303(e)) will assure accountability and due process.

Fourth, opportunities for local governments to develop responsible land use plans by themselves.—The State land use program would require two alternatives, but not mutually exclusive, techniques of implementation. We reiterate our understanding of S. 268 that the majority of land uses decisions made by local governments would not be affected. For those few decisions that transcend local governments, we strongly support the bill's directive that the local implementation alternative is to be preferred. Local implementation would be required to be consistent with State guidelines relating to critical areas and uses. We strongly support Senator Jackson's statement on introducing this bill that local governments would be given an opportunity to comply with the guidelines before preemption occurs. For critical areas and uses of statewide concern, Senator Jackson stated, "Direct State implementation, preempting local land-use planning controls, will continue to be the exception rather than become the rule and that joint local-State governmental land use decisionmaking and implementation will prevail."

Fifth, State technical assistance to local governments.—We support § 302(a)(9), requiring that the land use process include technical assistance and training for local agency personnel. These services could be efficiently performed by the associations of cities in every State, and urge that they be formally recognized and utilized.

Sixth, coordination of land use and other federally mandated planning activities.—Several provisions in S. 268 would accomplish this objective utilizing existing mechanisms. Federal actions would be coordinated with State and local plans to assure consistency. The regional clearinghouse established pursuant to § 209 of the Demonstration Cities and Metropolitan Development Act of 1966, and title IV of the Intergovernmental Cooperation Act of 1968 and under the control of local elected officials would be the mechanism for Federal-State-local interface.

Seventh, compensation for localities suffering revenue losses because of land use planning decisions.—A city may desire to remove land from commercial development, or preserve agricultural land from urbanization. If the consequences will be a loss in property taxes, the merits of that particular land use decision will already be heavily overshadowed by economic—and consequently political—reality. For most cities, the property tax is the major revenue-raising device allowed by the States.

Revenue sharing will reduce cities' dependence on the property tax to some degree. The fiscal relief Congress passed last year may be substantially diminished as the administration proceeds to shift more Federal responsibilities on to local governments, simultaneously reducing Federal financial assistance.

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We strongly urge, at a minimum, the States be required to take into account the impact of its State land use policies on local taxable property and on local property tax revenue.

We also urge that cities receive a payment in lieu of taxes when they withdraw or preserve land for a use furthering the purposes of this bill, or are mandated to withdraw or preserve such land. If the loss of property tax revenue is attributed to Federal policies or mandates, it should be the Federal Government's responsibility to provide payment; if the loss is attributable to State policies or mandates, than the State should pay.

To fail to recognize the economics of land use planning will only perpetuate the major bases for ills to which this bill is addressed. A program of positive incentives and compensation to counteract and neutralize property tax reliance would be the most effective way to realize the purpose of S. 268. Either as a categorical grant, an earmarked amount, or as an eligible use for planning and management grants. Such an incentive and compensatory program should be included in S. 268.

Eighth, encouragement of officials to utilize regional planning mechanisms which are under their control to make available planning decisions which cannot be made by the individual jurisdictions.—We are encouraged by the requirements of S. 268 for consideration, consultation and cooperation with areawide planning agencies. As the U.S. Conference of Mayors declared during their recent convention, "There are significant land use problems that have effects beyond the boundaries of cities that must be dealt with on a regional basis."

Local governments have substantial institutional arrangements to deal with regional matters. Regional clearinghouses and counsels of governments perform much-needed umbrella functions in metropolitan areas. Other mechanisms exist for planning and reviewing special or functional programs, such as § 134 Transportation Planning Agencies.

Furthermore, cities have joined together within their States to form State municipal leagues and associations. These State leagues provide many notable services to their member cities, and are an effective mechanism for the States to work with their cities on programs of statewide concern and application. We recommend that these statewide associations of cities be the primary point of interface between the State and local governments, and that they select the city representatives to the State advisory counsel. This is the experience, for example, in the State of Washington, where the Washington Association of Cities selects a member of the appeals body established under the State Shoreline Management Act.

Financial assistance for local and regional planning, of course, is essential. We, therefore, strongly recommend that associations of local government also be eligible for funds, particularly to provide technical assistance program evaluation and information dissemination.

Ninth, retention of substantial freedom for local officials to make and change community development plans in those communities with responsible land use plans in operation.—A consistent theme throughout the history of the land use bill has been the lack of capacity and inadequacy of existing land use planning arrangements at the State level. Limited expertise and resources on the State level indicate that State land use planning priority areas will be required to be designat-

ed. We would suggest that the States be directed to concentrate on opportunity areas, as described by Senator Jackson upon introducing S. 268. We agree that the focus of S. 268 should not be on urban lands, but rather on rural areas and areas on the urban periphery, that is, opportunity areas.

Conversely, where local governments have land use planning capacity and where they have a land use program, consistent with the State's plan and standards, States should not be misallocating their resources in duplicating or preempting local governments.

Such direction to the States would be entirely consistent with S. 268's encouragement of land use controls to be exercised by local governments, and also our proposal to explicitly allow funding of local land use programs.

Mr. Chairman, members of the committee, the issues raised in establishing a national land use policy are numerous and complex. We have attempted to outline these issues from the perspective of local governments, and we urge that you bear in mind that local governments will continue the lead role in implementation of land use plans. Our proposals deal specifically with the procedural and institutional arrangements of S. 268. The manner in which the key definitions and decisions are made will determine the substance of the State's land use plan and program. We are also concerned with substantive matters, and have made several recommendations for elements to be included in the State land use plan, and matters for direct Federal involvement, such as national solid waste disposal sites. We strongly urge their adoption.

The National League of Cities and the United States Conference of Mayors appreciate this opportunity to appear before this committee and discuss with you the "National Land Use Policy and Planning Assistance Act of 1973," S. 268. We shall be pleased to answer any questions.

Senator FANNIN. Mayor Wise, we are very pleased to have you with us.

You have covered it very completely and comprehensively.

You did qualify your endorsement with recommended amendments. I appreciate that you did so. Just one question, with respect to the unique situation existing between Forth Worth and Dallas airport, how are you planning for the Forth Worth-Dallas Airport?

Mr. WISE. This is probably, we feel, the greatest example of two major municipalities which had something of a reputation of being at each others throats over the years of coming together and with a system of a board with seven representatives from one city and four from the other in direct relationship to the population, using that valuable piece of property directly between the two cities for the best possible use. The fact that it was environmentally sound is very important. I think it is a good example of planned use for very valuable land. It seems to prove to me that the cities at the local level of government and the municipalities can indeed use good judgment and use the expertise at its disposal in this important matter of zoning and planning, and the best use of the remaining land around our cities.

We are very proud that it is going to open on schedule this fall and we hope you will be there for the opening.

Senator FANNIN. Thank you, Mayor Wise and I do commend you on making what some would consider a problem an opportunity to work together.

Mr. Mayor, we are very pleased——

Mr. WISE. I would point out here, there is no reflection on the State of Texas, but the State had no part in the planning of the airport. Nor did the counties. In fact, Dallas County voted it down and now we find ourselves in the position of some of the counties surrounding Dallas wanting to get in the act, but it is too late.

Senator FANNIN. Well, thank you very much, Mr. Mayor, we certainly appreciate your testimony.

[The material submitted by Mayor Wise follows:]

NATIONAL MUNICIPAL POLICY
of
NATIONAL LEAGUE OF CITIES
adopted at the
49th Annual Congress Of Cities
November 30, 1973
Indianapolis, Indiana

8.500 LAND USE PLANNING

Land use planning processes must be upgraded to assure that all community development decisions adequately take into account the long range and cumulative impact on natural resources, aesthetics, existing recreation and land use patterns and other factors in the community environment which may be adversely affected in development.

A land use planning partnership among the various levels of government can, and should, be developed – one which allows federal, state and local government to represent its respective constituency without unnecessarily usurping powers needed at the local level for the continuation of responsible decision-making. The following key principles should be embodied in development of a land use planning program:

A. Federal assistance to aid state and local land use planning programs;

B. Amendment of federal tax subsidy policies to support general land use goals in place of the widely inconsistent impact of present federal policies;

C. Federal encouragement of development of general statewide land use planning goals. These goals would set patterns for land development without dictating land-use decisions for individual communities;

D. Assurances that land use planning activity will be coordinated with or developed as a part of planning activity already mandated under other federal legislation;

E. Compensation for localities which will suffer revenue losses because of land use planning decisions imposed from a higher level;

F. A requirement that locally elected officials have a major role in the development of such state plans;

G. Opportunities for local governments to develop responsible land use plans by themselves, within the context of the general state goals;

H. State technical assistance to aid localities in developing comprehensive community development and land use plans;

I. Encouragement of local officials to utilize regional planning mechanisms which are under their control to make area-wide planning decisions which cannot be made by the individual jurisdictions;

J. Retention of substantial freedom for local officials to make and change community development plans in those communities with responsible land use plans in operation.

K. Preservation of prime agricultural land for primary agricultural uses.

RESOLUTIONS ADOPTED

Fortieth Annual Meeting
UNITED STATES CONFERENCE OF MAYORS
New Orleans
June 21, 1972

37. Land Use Planning

WHEREAS, cities are being confronted with a series of proposals on both the state and federal level to override local land use powers, and create functional planning districts unrelated to general land use planning or other functional planning; and

WHEREAS, these land use planning programs fail to adequately involve local elected officials and fail to place land use planning initiatives at the city level so as to assure sound intergovernmental cooperation and coordination for effective land use planning; and

WHEREAS, federal financial assistance is to be directed to the states without providing aid to the cities and regions for developing and implementing local land use control programs; and

WHEREAS, there are significant land use problems that have effects beyond the boundaries of cities that must be dealt with on a regional basis,

NOW, THEREFORE, BE IT RESOLVED that the United States Conference of Mayors urges adoption of a national land use policy to establish guidelines and objectives for state and local land use plans; and

BE IT FURTHER RESOLVED that land use planning and implementation be initiated at the city level, and where appropriate, be coordinated with regional planning mechanisms which are composed of local elected officials, and that federal and state financial and technical assistance be given to cities to enable them to develop and implement local plans and programs; and

BE IT FURTHER RESOLVED that federal, state and local governments undertake all steps necessary to end the fragmentation of planning that arises on the local level and undertake a review of policies and practices that contribute to unsound land use development, in particular, taxation and community development; and

BE IT FURTHER RESOLVED that the Congress adopt financial compensation to cities that withdraw land from tax-producing uses in the implementation of a national land use policy; for example, using shorefront redevelopment for park land rather than for commercial and residential use.

Senator FANNIN. The next witness is John L. Loftis, vice president of Exxon Co.

Welcome Mr. Loftis, we are very pleased to have you with us this morning, sorry you had to wait so long.

You may proceed as you desire.

STATEMENT OF JOHN L. LOFTIS, JR., VICE PRESIDENT, EXXON CO., U.S.A., HOUSTON, TEX.

Mr. LOFTIS. Thank you, Mr. Chairman.

INTRODUCTION

My name is John L. Loftis, Jr. I am a senior vice president and member of the management committee of Exxon Co., U.S.A. (a division of Exxon Corp.). Exxon U.S.A. is a fully integrated company which explores for oil and gas, produces, refines, transports, and markets petroleum and its products, and is also engaged in coal and uranium mining and exploration for other minerals. My company appreciates this opportunity to present our views on land use.

At the outset, let me say that Exxon U.S.A. supports the belief that legislation is needed to encourage a more efficient use of both public and private land. We believe the time has come for a more orderly, disciplined way of planning for and managing the future growth of the Nation. We think S. 268 is a good step in this direction and we generally support this legislation. My purposes today are first, to explain briefly why we feel land use planning is needed. Many of these reasons are recognized in S. 268.

Second, to describe the basic principles we believe should guide the formulation of land use legislation. Many of these are also included in S. 268.

Third, to comment specifically on S. 268, pointing out the primary features of the bill which we support and recommending in one or two instances ways in which we feel it can be improved further.

THE NEED FOR LAND USE PLANNING

As land resource users, we in the energy and minerals industries have long been familiar with the body of existing land use law. Although these laws have worked well generally, today's increasing demands have markedly reduced their effectiveness. Traditional systems of land management, overwhelmed by growing competition for use of limited land and water resources, have been unable in many cases adequately to balance the need for timely use and development of land resources and protection of environmental quality.

A prime weakness of existing land use systems is the inability of various levels of government to function together in solving common problems related to land use. Literally, scores of Federal organizations have responsibility over some aspect of land resource management. Each of these organizations was established to discharge a relatively narrow, specific responsibility and cannot act beyond the scope of its enabling legislation.

On the State and local level, the situation is even more fragmented. State-level organizations are widely supplemented by city- and county-

level bodies, together with an overabundance of special-purpose groups. A broad variety of private interests must also be taken into consideration. So, although a great many people in both public and private sectors are concerned with land use, this concern does not necessarily add up to a total management of land that is in the public's best interest.

This is particularly disurbing to those who have the responsibility for supplying the growing energy needs of the country. As Secretary Morton pointed out in his testimony before this committee in January of this year "* * * by 1985 our Nation's energy demand will equal 117 quadrillion Btu's, or 69 percent more than we used in 1971." The findings of the National Petroleum Council in its recent study, "U.S. Energy Outlook," suggest an 84 percent increase in energy consumption between 1970 and 1985.

Meeting this requirement in 1985, and in the years before and after, will require the finding and development of natural resources that are as yet undiscovered. It will call for converting these resources into usable products such as heating fuels, electricity, and transportation fuels in facilities that are as yet unbuilt. And, it will require the movement of these products to consumers in distribution systems yet to be constructed. Therefore, availability of adequate supplies of energy will depend, among other things, upon the timely development of public and private lands, including the siting of essential energy facilities such as mines, dams, powerplants, drilling rigs, pipelines tankers, deepwater terminals, and refineries.

For example, there seems to be a general consensus that by 1985 the United States will have to derive approximately 60 percent of its petroleum supplies by imports. In order to provide this volume of imports, at least three deepwater offshore unloading terminals would be desirable from an economic standpoint. Some 400 to 500 additional tankers of 250,000 deadweight ton size will be required; only 110 are in service today. Since importation of crude oil rather than products is in the national interest from both economic and national security standpoints, there will be a need to expand U.S. refining capacity by some 8-million barrels per day. Although much of this could be accomplished by expansion of existing facilities, to give you an idea of the scale it would mean the equivalent of some 55 additional refineries of 150,000 barrels per day size. Yet today there is not a single new refinery under construction in the United States, nor any new refinery contracts let, largely because of uncertainty with respect to import policy and environmental requirements.

In recent years, we have been increasingly concerned about the environmental effects of private and public activities. A new body of law has risen and is being administered to protect our air and water resources. Adherence to these laws will prevent much of the misuse of the past. However, attention to one area of concern to the exclusion of others often hinders efforts to achieve maximum public benefit. What is needed in land resource planning is a balanced approach that recognizes the full spectrum of environmental, economic, and social needs.

The energy industries have experienced repeated delays in their efforts to add to the Nation's domestic energy supplies and to construct facilities for energy transportation, processing, or generation. For example, in a number of States—California, Florida, and New York

among them—construction of both fossil and nuclear powerplants have been delayed.

In Alaska, the largest privately financed construction project in history—the trans-Alaska pipeline—has been dormant for several years.

At Santa Barbara, Calif., development of large oil reserves offshore in the Santa Barbara channel has been delayed since 1969.

In Delaware, a State law has been adopted banning new heavy industry along the entire 100-mile Delaware Bay coastline, thus ruling out at least one potential new oil refinery along the Atlantic coast.

In California, proposition 20, a coastal zone initiative passed in late 1972, could result in extensive delays—or outright prohibitions—of any kind of development in the permit area, including all energy operations even down to the retail level.

These and other setbacks have hampered substantially the energy industries' efforts to come to grips with the Nation's energy problems. And they have led my company to the conclusion that in the overall public interest a new way must be found to resolve such conflicts in a more satisfactory, more expeditious, and less expensive manner. A new set of groundrules is required to assure proper resource development and the availability of adequate land and water sites for essential activities, while providing a proper balance among economic achievement, environmental conservation, and other emerging social concerns.

In light of these and other considerations, it is little wonder that pressures have been building at both Federal and State levels for new land-use systems. Our concern is that the new systems be soundly built and that they incorporate certain basic principles which I will now discuss.

BASIC PRINCIPLES TO GUIDE LAND-USE LEGISLATION

A major consideration of new land-use systems should be recognition of the inherent value of private decisionmaking in the land-use process. Unlike air and water resources, which generally are owned by the public, a large part of the land, including mineral rights, is subject to private and State ownership, and most of the activities which make land so valuable economically are carried out by the private sector on private property. Regulation of its use should take this into consideration.

It is inevitable that any new system of managing land use will raise questions about impairment of property rights. In addressing these questions, it should be recognized that within the legal framework of landownership, the right of a private landowner to decide the use of his private property is a mainstay of our economic system. Basically, the rule of property use is permissive and restrictions are recognized only for truly compelling reasons.

This system has produced outstanding results. The property owner has the opportunity to succeed—or to fail—on the exercise of his own judgment, and this competitive process tends to perpetuate the good decisions and allows the bad ones to disappear. In this way, national productivity and resource utilization are improved. No centralized authority, no matter how wise, could duplicate the success of this innovative "natural selection" process of property use.

There are those who say this system should be changed because it has not prevented misuse of lands in the past. Unquestionably, there

have been times when some Americans might have used their lands in a more selective and careful manner than they did. But this can be corrected through a more disciplined approach to land-use planning and management. The broadest range of public and private benefits can be obtained through a future land-use regulatory philosophy which continues to encourage creativity and innovation in the use of their lands by individual property owners.

A second major consideration in land use is the need to give proper weight to all pertinent values. New regulatory structures should properly balance the various economic and noneconomic interests. For example, it is certainly in the national interest to protect our natural environment. But it is also in the national interest to have adequate domestic supplies of energy to fuel our economy and of minerals to provide raw material needs. To accomplish this, the energy-producing and minerals-extracting industries must have appropriate access to lands where fuels and minerals are to be found. And it is in the national interest that regulation not be so onerous as to impede economic development by creating bottlenecks in transportation, commerce, and overall productivity. There should be a balance of the various national interests in land-use management.

This balance can be more readily achieved if the fundamental principle of compatible multiple use of lands is followed. The "multiple use" concept was adopted early in the history of Federal lands management. New land use systems should encourage multiple uses which are compatible with each other and with the environmental needs of the area. One method of assuring proper land uses would be to establish performance standards for lands based on each area's special environmental requirements or dominant uses. All activities within the given area—whether public or private—could be required to meet these performance standards, and those activities which meet the test would be permitted. In this way, economic and environmental considerations could be properly balanced.

This is especially important in critical areas such as our coastal zones. For example, one environmental performance standard for tidal marshes and shallow bays might be that no structure could be erected which would unduly impede or degrade the natural water flow. Any structure which could meet that standard would then be permitted. The same shallow-water area could be utilized simultaneously for such constructive purposes as shrimping, oyster farming, selective shell dredging, oil well drilling, transportation channels, and outdoor sports.

In some areas of critical concern, it will be recognized that the area is particularly suited for one or more uses. It is proper to recognize dominant uses and to prescribe performance standards for other compatible uses so as to protect the dominant use or uses. All other uses which meet the performance standards should be allowed.

This is much better than arbitrarily denying certain land uses through preemptive statewide zoning or the creation of sanctuaries. Both of these methods have been proposed recently. In fact, proposals advanced in some States are so severe that they would deny certain uses of private property to the property owner. In cases where such property restrictions are deemed essential to the public interest, it is necessary to recognize the obligation to compensate land owners for the loss in value that such restrictions impose upon their holdings.

Land use planning and management systems will involve all levels of Government, and the role of each should be carefully delineated. In our system of Government, the States have the basic authority to manage non-Federal lands and therefore should have the dominant role in the land use system. This presupposes that the States will provide effective machinery for doing the job, and by implication means that the States should study their present systems with an eye toward improving them. The degree of concentration of administrative power at the State level is a matter of State concern.

However, it is important that the State land use authority have a balanced viewpoint and not be established in agencies having only one mission. Land use planning and management should represent all views and should be responsive to elected bodies. Perforance standards, dominant uses, and plans should be subject to periodic review at the State level. The land use system should bear evenly on all land users and appeal procedures should be available.

It is a legitimate function of State government to delegate authority to agencies, municipal corporations and other substate bodies as needed for proper and efficient exercise of State responsibility. However, in many instances, local actions are at variance with the broader needs of society and it would be expected, therefore, that proposed land use systems will place much of the authority at the State level.

Recognizing that planning for some areas, such as economically or ecologically interdependent regions, may transcend State boundaries, the formation of interstate compacts or commissions is desirable as a means of attacking the problems. It is also recognized that in exercising its dominant role of land use planning and management, the State authorities must so act as to protect national interests in matters of national concern. The States, however, are not always capable of defining such interests and should conform to Federal guidelines in such matters.

The Federal Government acts in several capacities where land use is concerned. First, it administers federally owned lands and, of course, should continue to do so. Second, it serves as a source of revenue for State and local governments and should provide financial assistance, where needed, for creation of new and improved land use systems among the States.

There is yet a third area of Federal responsibility which is an essential aspect of proper land use planning and management. Although we are of the opinion that State governments and their delegates should dominate the actual planning and management for the use of land resources, the Federal Government has a nondelegable role to act in matters of truly national concern, such as activities affecting national security.

In some instances, the activities of State or interstate land use agencies may impinge on or be at variance with the welfare of the Nation as a whole. In such instances, Federal policy must dominate and thereby affect State and local government decisions and private initiative. The Federal role should not be to participate directly in land use planning and management at State levels as regards matters of national concern, but should be to provide broad guidelines or establish national goals to inform State land use planners of national needs. Through national policy statements, broad goals and national needs can be expressed.

Reducing this idea to practice within the framework of historical State and Federal roles is something with which we will all be increasingly concerned as the need for national guidance grows. It is our intent, however, to point out that we see this incipient Federal role in matters of national concern as part of the overall land use planning and management needs.

In summary, we believe that to be effective, a program of land use should recognize and maintain the value of the private decisionmaking process; balance economic and noneconomic considerations; provide for compatible multiple uses of lands and waters; place the primary implementation responsibilities on the States while the Federal Government serves to review State plans, provide financial aid, and balance State and local needs with the national interest.

COMMENTS ON S. 268

With this general statement of our land use philosophy in mind, I would now like to turn my attention briefly to S. 268 and comment specifically on some of its provisions.

As mentioned at the outset, we believe S. 268 in purpose and intent generally accommodates our philosophy and we, therefore, commend it. We concur in the basic concepts of this proposed legislation and endorse its ultimate goal of achieving a balanced use of the lands in accord with sound environmental, economic, and social values. We agree that the proper Federal authority to administer land use legislation is the Secretary of the Interior, supported by the advice of other Federal authorities. We concur with the provisions of S. 268 which recognize that State governments and their delegates are the primary responsible governments in matters of management of private and State-owned lands, and we agree with the provisions which require Federal agencies to coordinate their projects with State land use programs.

We believe the intent of S. 268 could be benefited by some additions or modifications. In order to obtain a balanced use of land resources, we suggest that the bill's statement of purpose specifically favor land use systems which encourage compatible multiple uses, competitive enterprise, and the protection of private property rights in accord with sound environmental, economic, and social values.

We note in section 305(c) that before making a grant under this act, the Secretary of Housing and Urban Development must be "satisfied" that a State's land use plan complies with specified sections and requirements of the Housing Act of 1954. After the five complete fiscal year period following enactment of S. 268, the Administrator of the Environmental Protection Agency would also have to be "satisfied" that a State's land use plan complied with appropriate legislation under his jurisdiction.

We believe that requiring what amounts to the approval of these two mission-oriented authorities is not consistent with the fair balance of considerations which this bill is devoted to obtaining. We suggest therefore, that the Secretary of the Interior be directed only to consult with the Environmental Protection Agency and Housing and Urban Development as regards compliance of State land use plans and programs with Federal housing and environmental control legislation.

We note also that no appeal routes are available from the findings of the ad hoc hearing board provided in section 305(g) to arbitrate the decision of the Secretary to refuse a State's proposed land use plan. We recommend provisions for judicial appeal be added.

As a declaration of policy, section 102(a) states that:

> . . . Congress declares that it is a continuing responsibility of the Federal Government . . . to undertake the development and implementation of a national land use policy which shall . . . provide a framework for the development of State and local land use policies.

Section 103(c) declares that it is the purpose of this act to:

> Establish reasonable and flexible Federal requirements to give individual States quidance in . . . the establishment and implementation of adequate State land use programs.

In view of these statements of policy and purpose, it would be appropriate either to state in the bill Federal policies regarding the use of Federal lands, including delineation of areas of national concern, or to require the Secretary of the Interior to develop such policies and present them to Congress so that they can be ratified. If not included in the bill, Federal policies regarding public land resource use and development should be developed sufficiently early in the initial 5-year State planning cycle provided in S. 268 to be useful guidelines for State policymaking prior to the time State governments must seek Federal approval of their land use programs.

In conclusion, I would like again to say we are in basic agreement with the proposed land use legislation and believe that with the few additions we have suggested, its passage would result in a beneficial step in the development of our Nation's lands.

BIOGRAPHY OF JOHN L. LOFTIS, JR., SENIOR VICE PRESIDENT, EXXON, U.S.A., HOUSTON, TEX.

J. L. Loftis, Jr., is senior vice president and member of the management committee of Exxon USA, Houston, Tex.

A native of Deming, N.M., Loftis joined the company as a member of a seismograph crew after receiving his bachelor of science degree in geology in 1940 from the University of Texas.

He served as an officer in the Air Force during World War II, returning to the company's Exploration Department in 1946 as a research geologist in Houston.

Since that time he served in positions of increasing importance, including assistant chief geologist for the company, exploration manager of the Southwest Region, general manager of the Central Region and operations manager in the headquarters Exploration Department.

He was named general manager of the Minerals Department in 1970 and assumed his present duties in May 1972.

Loftis is a fellow in the Geological Society of America and holds memberships in the American Association of Petroleum Geologists, the American Institute of Mining, Metallurgical and Petroleum Engineers, the Houston Geological Society, the American Petroleum Institute, the Texas Mid-Continent Oil & Gas Association, the Chamber of Commerce of Houston and the Petroleum Club of Houston.

Loftis was born January 28, 1916. He and his wife, Teddine, reside in Houston. They have two sons and a daughter.

Senator FANNIN. Thank you very much, Mr. Loftis.

You covered your statement very thoroughly. I do compliment you for taking a very objective position.

You have expressed great concern over just how these decisions will be made. You are entitled to have that feeling and to know that you will have a fair hearing.

You bring up the need for environmental protection and a new set of ground rules with respect to the availability of land while providing proper balance among economic, environmental, and other social concerns. Notwithstanding our concern over this particular land use bill, some measures are needed to create Federal legislation for transmission lines, refineries, and deepwater ports. What is your opinion concerning the Federal Government making the determination where energy facilities should be sited?

Mr. LOFTIS. I would be opposed to this, Mr. Chairman.

Senator FANNIN. Is it your feeling, Mr. Loftis, that the local government or State government should be empowered in this regard?

Mr. LOFTIS. Before I could answer that question, I would have to know in a little more detail how they would go about it. I think basically my feeling is that since all of these things do create some kind of a problem to people who live around them, I think the people who do live around them should have a strong voice in what happens to them.

Senator FANNIN. I agree.

You are saying that the Secretary of Interior should only consult with the Environmental Protection Agency and HUD. I can understand your concern and your suggestion that this be done.

Do you feel that consultation would still give the protetcion to the environment that is needed and required by this act?

Mr. LOFTIS. Yes, sir; I surely do. I don't think this in any way would obviate the necessity of going through environmental hearings and this sort of thing.

I guess it just occurred to us that maybe these two mission oriented agencies were being given some special consideration in this bill and I guess I would have to say we don't think this proper.

Senator FANNIN. As I understand, there would be many instances in which these agencies would not be involved because of the location of the siting?

Mr. LOFTIS. I would think so, particularly with the passage of time when this might well get to be pretty standard procedure in certain areas such as mining and this sort of thing, the drilling of oil wells and so on.

Senator FANNIN. Well, thank you very much, Mr. Loftis, you are a very capable witness. I certainly feel we will benefit by your testimony.

Mr. LOFTIS. Thank you very much.

[The supplementary statement of Mr. Loftis follows:]

SUPPLEMENTARY STATEMENT OF JOHN L. LOFTIS JR., SENIOR VICE PRESIDENT, EXXON CO., U.S.A.

Exxon USA supports the belief that legislation is needed to encourage a more efficient use of both public and private land. We believe the time has come for a more orderly, disciplined way of planning for and maaging the future growth of the nation.

THE NEED FOR LAND USE PLANNING

My industry is responsible for supplying the growing energy needs of the United States. The findings of the National Petroleum Council in their study, *U.S. Energy Outlook*, suggest an 84 percent increase in energy demand between 1970 and 1985.

The availability of adequate supplies of energy will depend upon the timely development of public and private lands, including the siting of essential energy facilities such as mines, dams, power plants, drilling rigs, pipelines, deepwater tanker terminals, and refineries. Yet in recent years the energy industries have experienced repeated delays in their efforts to add to the nation's domestic

energy supplies and to construct facilities for energy transportation, processing, or generation. A new set of ground rules is required to assure proper resource development and the availability of adequate land and water sites for essential activities, while providing a proper balance among economic achievement, environmental conservation, and other emerging social concerns.

BASIC PRINCIPLES TO GUIDE LAND USE LEGISLATION

We believe that to be effective, a program of land use should recognize and maintain the value of the private decision making process; balance economic and non-economic considerations; provide for compatible multiple uses of lands and waters; place the primary implementation responsibilities on the states while the federal government serves to review state plans, provide financial aid, and balance state and local needs with the national interests.

Private decisionmaking

Two-thirds of the lands in our nation are privately owned or state-owned, and most of the activities which make land so valuable economically are carried out by the private sector on private property. The right of a private land owner to decide the use of his private property has become a mainstay of our economic system. The property owner has the opportunity to succeed—or to fail—on the exercise of his own judgment, and this competitive process tends to perpetuate the good decisions and allows the bad ones to disappear. In this way, national productivity and resource utilization are improved. No centralized authority, no matter how wise, could duplicate the success of this innovative "natural selection" process of property use. It should be continued under future land use regulatory systems.

Balancing national interests

In land use management, proper weight should be given to all economic and non-economic interests. For example, the national interest in environmental quality must be balanced with the nation's need for adequate domestic supplies of energy and minerals, and the consequent need for appropriate development of lands where fuels and minerals are to be found.

Compatible uses

New land use systems should encourage multiple uses which are compatible with each other and with the environmental needs of the area. Performance standards should be established based on each area's special environmental requirements or dominant uses. All activities within a given area—whether public or private—could be required to meet these performance standards, and those activities which meet the test would be permitted. This is preferable to arbitrarily denying certain land uses through preemptive statewide zoning or creation of sanctuaries.

Roles of governments

The states have the basic authority to manage non-federal lands and should have the dominant role in the land use system. The states should provide effective machinery for doing the job, maintain a balanced viewpoint toward all land users, and form interstate compacts or commissions when this is needed to deal with problems transcending state boundaries.

The federal government should continue to administer federally owned lands and should provide financial assistance to states for creation of new land use systems. It should also act in matters of truly national concern, such as activities affecting national security. In some instances, the activities of state or interstate land use agencies may impinge on or be at variance with the welfare of the nation as a whole. In such instances, federal policy must dominate and thereby affect state and local government decisions and private initiative. The federal government should provide to the states broad guidelines on national goals.

Exxon USA concurs in the basic concepts of S. 268 and endorses its ultimate goal of achieving a balanced use of lands in accord with sound environmental, economic, and social values.

Senator FANNIN. Thank you very much.

The hearings will be resumed at 2 o'clock.

[Whereupon, at 1 p.m., the hearing was recessed, to be reconvened at 2 p.m.]

Senator HASKELL [presiding]. The hearing will reconvene.

Mr. Tupling of the Sierra Club, would you introduce yourself and introduce the gentlemen that you have with you at the table and their organization.

STATEMENTS OF WILLIAM DUDDLESON, THE CONSERVATION FOUNDATION; CHARLES CALLISON, NATIONAL AUDUBON SOCIETY; DAVID CALFEE, ENVIRONMENTAL POLICY CENTER; JOEL PICKELNER, NATIONAL WILDLIFE FEDERATION; JOSEPH PENFOLD, IZAAK WALTON LEAGUE; CARL POPE, ZERO POPULATION GROWTH; AND LLOYD TUPLING, SIERRA CLUB

Mr. TUPLING. Yes, Mr. Chairman.

I am W. Lloyd Tupling of the Sierra Club. I have with me members of the panel on S. 268. Starting at the left, Mr. Charles Callison of the National Audubon Society; Mr. William Duddleson, of the Conservation Foundation; Mr. David Calfee of the Environmental Policy Center; Mr. Joel Pickelner of the National Wildlife Federation; Mr. Joseph Penfold of the Izaak Walton League; Mr. Carl Pope, Zero Population Growth.

Senator HASKELL. I am not sure your microphone is working. It may be a little difficult for the people in the back of the room to hear you.

All right. That is better.

Mr. TUPLING. This group is appearing as a panel by consensus, which does not mean to imply that we are in complete accord on all details of anything that might be said by individuals of the panel.

We thought in the interest of saving time and in the interest of reducing redundancy that we would attempt to summarize our overall statements into general categories because we feel that additional attention has to be given to some shortcomings that we see in the bill.

Some of the members will address themselves to the problem of land inventory, to the question of sanctions, to policy criteria, the land use guidelines, to funding the program, to public participation and the overall problem of development versus the environmental concerns which are the basis of the land use problems.

We in the Sierra Club are particularly interested in helping to create among people generally a greater ecological awareness and a more ethical attitude toward land and other resources.

A national land use policy that envisions land as something more than a commodity to be bought and sold for maximum profit or speculative pleasure will give this Nation time to anticipate and provide more intelligently for the future. As we approach the second centennial of our Nation's founding, we urgently need a more rational and responsible method of anticipating the future.

One avenue to achievement of such a goal would be to include in the declaration of policy of S. 268 a stronger initial statement of intent that the Land Use Policy and Planning Assistance Act seeks to protect the American environment—that land use planning be based on ecological principles to promote the quality of life.

The National Environmental Policy Act which grew out of deliberations by this committee gave voice to that viewpoint, NEPA emphasized creation and maintenance of conditions under which man and nature can exist in productive harmony.

S. 268, however, is environmentally neutral. It does not give recognition to the policies and procedures which NEPA has brought to the governmental decisionmaking process.

New land use legislation must be weighted toward environmental concerns, lest accelerating growth and development continue as the dominant factors in land use policy determinations.

Unless changes are made to upgrade environmental conditions, S. 268 should not be passed as introduced.

A matter of confusion and great concern to many of us in environmental organizations is that this legislation would invest the States by law with a considerable amount of control over Federal actions.

This feature is not only curious because it is a clear departure from the traditional view that the Federal Government prevails when there is a Federal and State policy conflict, but also, because it seems very possible that the policy decisions made at a Federal level to address a particular need or set of needs are vulnerable to being undermined.

There is a critical need to better coordinate and integrate the many Federal, State, and local programs as they relate to a given area of land to increase efficiency and decrease duplication and conflicts in order to allow us to address better the needs not now provided for.

Yet, this legislation as written does not give us any policy framework to use as a guide in the integration of the many programs.

We all support good constructive planning, but planning is only a process into which the goals and assumptions must be plugged. We feel that the Congress is a proper institution to formulate these general policy guidelines.

The Congress is the only appropriate decisionmaking institution, because only Congress is representative of and responsible to the entire population of the United States.

Congress represents the multitude of contending policy considerations and only in Congress can these be resolved appropriately.

If broad policymaking is left to the States many problems of national concern likely will continue without being addressed adequately, and, even more importantly, Federal policies created with great consideration and deliberation may be subverted, forgotten, or otherwise unimplemented.

Furthermore, it is absolutely necessary for Congress to the Secretary of the Interior, or whoever is the Federal administrator of this legislation, broad policy direction.

The Congress is all too aware of how the executive branch often interprets legislation to fit its conception of what should be done, sometimes subverting the intent of Congress.

Hearings on land use planning held by this committee in the past have demonstrated how important land use planning is and the great and diffuse impact it has. This is much too important to delegate without direction to any executive agency.

It has often been said that land use decisions are so very critical because they synthesize the many competing needs, such as recreation, housing, transportation, air and water pollution abatement, preservation, and so forth.

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Disregard of any of these can be tragic and to the extent they compete for land there are many trade-offs. How these trade-offs are made and the consideration that goes into the decision is all important.

Therefore, there must be Federal policy created by Congress which sets forth in broad form how a balance between these competing uses of land shall be made.

We understand that it is hoped that the power which this bill delegate to the States will serve as an incentive for them to participate in this land-use planning program.

We have no reason to doubt that this is true.

Yet, we feel this States rights incentive may produce situations which are not in the national interest. Not only may the States adopt policies which conflict with the national interest, but the States may further delegate their override power to local government creating the probability of local governments as well as State governments, for all practical purposes, vetoing Federal policies and actions.

This is inappropriate because we all know well from experience that land-use decisions have impacts beyond a single local jurisdiction.

The provisions for overriding national interest allowing a Federal program to go forward in spite of State or local opposition and the influence the Secretary may exert as a result of his power to approve or disapprove a State program for funding are clearly inadequate. Because of the State override provisions of the bill, it will be a rare occurrence when the national interest will prevail.

To correct this State override problem we feel three provisions of the bill must be improved.

1. A set of national environmental criteria or guidelines must be added to the bill to give guidance to the States in synthesizing the competing uses of land and to protect the national interest.

2. The public participation provision of the bill must be greatly extended along the lines suggested by other members on this panel.

3. Provisions for joint action by Federal and State representatives must be strengthened to make it standard operating procedure.

Such a joint action working procedure would serve to prevent many intergovernmental conflicts by increasing communication, understanding, and joint control.

Senator HASKELL. Thank you.

[The complete statement of Mr. Tupling follows:]

STATEMENT OF W. LLOYD TUPLING, WASHINGTON REPRESENTATIVE SIERRA CLUB

Mr. Chairman and members of the Committee, I am W. Lloyd Tupling, Washington Representative of the Sierra Club, a national organization of about 140,000 members concerned with environmental matters.

We in the Sierra Club are particularly interested in helping to create among people generally a greater ecological awareness and a more ethical attitude toward land and other resources. A national land-use policy that envisions land as something more than a commodity to be bought and sold for maximum profit or speculative pleasure will give this nation time to anticipate and provide more intelligently for the future. As we approach the second centennial of our nation's founding, we urgently need a more rational and responsible method of anticipating the future.

One avenue to achievement of such a goal would be to include in the declaration of policy of S.268 a stronger initial statement of intent that the Land Use Policy and Planning Assistance Act seeks to protect the American environment--that land-use planning be based on ecological principles to promote the quality of life. The National Environmental Policy Act which grew out of deliberations by this Committee gave voice to that viewpoint. NEPA emphasized creation and maintenance of conditions under which man and nature can exist in productive harmony.

S. 268, however, is environmentally neutral. It does not give recognition to the policies and procedures which NEPA has brought to the governmental decision-making process. New land-use legislation must be weighted toward environmental concerns, lest accelerating growth and development continue as the dominant factors in land-use policy determinations. Unless changes are made to up-grade environmental considerations, S. 268 should not be passed as introduced.

A matter of confusion and great concern to many of us in environmental organizations is that this legislation would invest the states by law with a considerable amount of control over federal actions. This feature is not only curious because it is a clear departure from the traditional view that the federal government prevails when there is a federal and state policy conflict, but also, because it seems very possible that the policy decisions made at a federal level to address a particular need or set of needs are vulnerable to being undermined.

There is a critical need to better coordinate and integrate the many federal, state, and local programs as they relate to a given area of land to increase efficiency and decrease duplication and conflicts in order to allow us to address better the needs not now provided for. Yet, this legislation as written does not give us any policy framework to use as a guide in the integration of the many programs.

We all support good constructive planning, but planning is only a process into which the goals and assumptions must be plugged. We feel that the Congress is a proper institution to formulate these general policy guidelines. The Congress is the only appropriate decision-making institution, because only Congress is representative of and responsible to the entire population of the United States. Congress represents the multitude of contending policy considerations and only in Congress can these be resolved appropriately.

If broad policy-making is left to the states many problems of national concern likely will continue without being addressed adequately, and, even more importantly, federal policies created with great consideration and

deliberation may be subverted, forgotten, or otherwise unimplemented.

Furthermore, it is absolutely necessary for Congress to give the secretary of the Interior, or whoever is the federal administrator of this legislation, broad policy direction. The Congress is all too aware of how the executive branch often interprets legislation to fit its conception of what should be done, sometimes subverting the intent of Congress. Hearings on land use planning held by this committee in the past have demonstrated how important land use planning is and the great and diffuse impact it has. This is much too important to delegate without direction to any executive agency.

It has often been said that land use decisions are so very critical because they synthesize the many competing needs, such as recreation, housing, transportation, air and water pollution abatement, preservation, and so forth. Disregard of any of these can be tragic and to the extent they compete for land there are many trade-offs. How these trade-offs are made and the consideration that goes into the decision is all important. Therefore, there must be federal policy created by Congress which sets forth in broad form how a balance between these competing uses of land shall be made.

We understand that it is hoped that the power which this bill delegates to the states will serve as an incentive for them to participate in this land use planning program. We have no reason to doubt that this is true. Yet, we feel this states-rights incentive may produce situations which are not in the national interest. Not only may the states adopt policies which conflict with the national interest, but the states may further delegate their override power to local government creating the probability of local governments as well as state governments, for all practical purposes,

vetoing federal policies and actions. This is inappropriate because we all know well from experience that land use decisions have impacts beyond a single local jurisdiction.

The provisions for over-riding national interest allowing a federal program to go forward in spite of state or local opposition and the influence the secretary may exert as a result of his power to approve or disapprove a state program for funding are clearly inadequate. Because of the state over-ride provisions in the bill, it will be a rare occurence when the national interest will prevail.

To correct this state over-ride problem we feel three provisions of the bill must be improved.

1. A set of national environmental criteria or guidelines must be added to the bill to give guidance to the states in synthesizing the competing uses of land and to protect the national interest.

2. The public participation provision of the bill must be greatly extended along the lines suggested by other members on this panel.

3. Provisions for joint action by federal and state representatives must be strengthened to make it standard operating procedure.

Such a joint action working procedure would serve to prevent many inter-governmental conflicts by increasing communication, understanding and joint control.

Senator HASKELL. Who would you prefer to testify next?
Mr. TUPLING. Well, Carl Pope was next on my schedule here.
Senator HASKELL. Fine, go ahead, Mr. Pope.

STATEMENT OF CARL POPE, ZERO POPULATION GROWTH

Mr. POPE. I am Carl Pope, director of political activities of Zero Population Growth.

Our perspective on this legislation perhaps differs in two regards from those traditionally presented.

We had gotten into this issue last year as a result of leadership from our local chapters in States like Washington, California, Hawaii, and Vermont where our chapters became heavily involved in local land use problems and local growth.

So that in looking at a piece of legislation like this, the first question which we have asked ourselves is, given the fact that it is very clear that in an increasing number of States local citizens are already dissatisfied with the traditional mechanisms for the control of land use and are already beginning to assert themselves in favor of the principle that the local community as a whole, and not just the private land speculator, must determine future use of land, what would the effect on those efforts be of national land use legislation.

From this prospective it seems clear to us that the absolutely critical element in any Federal land use legislation must be the maximum possible encouragement of the States to undertake immediately the process of inventory of their land resources and the limits of the use to which those resources can be put.

We feel that a great deal of the abuse of land resources which has occurred in this country in the past has been the result of the fact that those who wish to put lands to a particular purpose have not been required to spell out to the public which would be affected the full costs and consequences of that decision.

We believe that if, at the very least, if we can develop a situation in which a local community will know when a deferral comes down the road with a proposal, when a master plan is submitted, if the citizenry, affected parties are made aware of what the real consequences of that plan as a whole are, then we actually have a fair degree of confidence that even if decisions are made at the local level, that responsible decisions will be made.

We feel a larger part of the problem in this area comes from the fact that there is no social responsibility decisionmaking operation then from the Government instrumentality charged with making decisions.

We don't believe locating the decisionmaking process in the State or Federal bureaucracy will necessarily result in the protection of those values which have not been protected in the past.

From this prospective, the land inventory provisions of this bill as outlined in section 302, paragraphs 1 to 8, is only one part of what we would see to be a complete land inventory.

The bill as written provides, it seems to us, for the adequate acquisition of data on the different facets which affect land use considerations.

They range from the preparation of an inventory of the basic land resources to compilation of data with population trends and environ-

mental conditions, projections of the need of land use for different sorts of purposes, inventory on basic ecological data, continual revision of those needs which State and local governments set for land purposes, discussion of institutions and resources available for land use planning, establishment of a method for identifying large-scale developments, establishment of a method for inventory and environmental concern.

That is, well, as far as it goes.

But it is also going to be a pretty massive amount of data. If that data is actually to have impact in the policy process, wherever that takes place, it has to be organized in a way so that unavoidable tradeoffs between different kinds of land use considerations, different decisions about the population size permitted in a given area, different decisions about transportation patterns in a new community, so that those tradeoffs are spelled out to all parties affected.

At the present time only parties which have the ability to take the data and make use of it are those which stand to make a profit.

The general public and citizens groups are not able to use that data even where it is available and to do something with it.

So we feel very strongly and have outlined some possible additional criteria on page 3 of my written statement that this legislation should not only require that they develop the data, but it should also require the data be put in the form which spells out costs and consequences of alternate patterns of growth for a given area and ultimate decisions about ways in which land may be used.

Now, in addition, one of the critical questions that have been raised repeatedly about the legislation is the question of sanctions. We believe they should be restored with the bill. In particular we believe that the arguments which have been made against sanctions by those who oppose them do not hold in the case of sanctions which would apply to the inventory process.

We cannot see any case, any valid case to be made against requiring the States to conduct this kind of inventory. The sanctions which have been proposed in this bill relate to Federal investment and we feel in the absence of the kind of information which this inventory would require the States to get here, it is quite impossible for the States to make intelligent use of that investment. They cannot adequately locate highways, plan for airports, or properly assess the open space needs unless they have gone through the kind of process which is outlined in section 303 of this bill.

So we would say what had been called sanctions can be viewed as sanctions or incentives to the States, but you can also make a strong case for defending those as appropriate guidelines for Federal investment for assuring that public funds are spent in a way which would enable them to redeem the public values for which they were appropriated.

So we would urge you in revising this legislation to apply sanctions to the inventory part of this bill if you do not feel you can impose them for the entire process.

Thank you.

[The prepared statement of Mr. Pope follows:]

STATEMENT OF CARL POPE, WASHINGTON REPRESENTATIVE
ZERO POPULATION GROWTH, INC.

Mr. Chairman, members of the Committee. My name is Carl Pope, and I am the Washington Representative of Zero Population Growth, a national, grass-roots organization working towards solutions to problems related to population growth. ZPG has become increasingly involved in problems related to population distribution, largely because many of our local chapters in such areas as Los Angeles, Vermont, Florida, New Mexico, Maryland and Connecticut have found themselves committed to finding better solutions to the problems of local growth and land use planning than those represented by the traditional Chamber of Commerce growth ethic and haphazard zoning laws. The perspective we bring to these hearings, then, differs in two regards from many of the traditional concerns in this area. First, where the traditional planning ethic has taken growth as a given, and tried to plan for it, we take growth as a legitimate dependent variable to be influenced by public policy. It seems to us that a county which wishes to remain predominantly agricultural should have that right, unless and until a higher level of government makes a decision that, as part of an overall plan to achieve a desired level of population, the desiresof the county should be subordinate to the needs of the broader region. We do not accept the premise that the desire of individual property owners to achieve the maximum rate of increase in the value of their property should prevail over the wishes of the people of a community to limit population growth, because we believe that excessive population growth is damaging to the safety, health and welfare of the community.

Second, we look at this legislation from the perspective of community activists who are working to control growth. We have asked ourselves above all the question, "Will this legislation be helpful to people at the community level who are trying to get the political process to make responsible, accountable decisions about growth and land use?" Not all of those citizens, to be sure, share our perspective; but we believe that the important thing is to be sure that all citizens have a share in land-use decisions which, as much as anything else, will determine the future shape and quality of their lives as members of the community.

From these perspectives, we suggest three basic criteria to consider in developing such a piece of pioneering and critical legislation:

1. The legislation should insure the development of comprehensive, effective, and usable land inventories. Knowledge about the extent and limits of these resources, in the present and over time, is an absolute precondition for effective management and planning.

2. The bill should provide a procedural framework suitable not only for initial, enabling legislation, but also for later, more substantive federal legislation which might follow. It is far easier to write specific criteria into federal legislation at a later date than it is to dispose of the procedural framework already set up.

3. Even in enabling legislation, specific criteria and guidelines should be developed where there are clear and unequivocal federal interests, particularly if federal prerogatives are to be yielded to the states.

ZPG thus feels that the heart of any national land use bill to emerge from this Congress must be in its provision and encouragement of state land inventories and assessments. We applaud and support fully the intent of Sec. 302 of the bill, but believe that this inventory procedure is so important that it deserves to be spelled out in even greater detail.

Specifically, we would suggest that an effective inventory should provide the following features, in addition to those already spelled out in Sec. 302, paragraphs 1-8.

A. The identification of critical ecological limits for any area, and of patterns of use of development which might result in irreversible damage to critical elements of the area's ecosystem. Among such limits would be maximum loss of absorbtive areas consistent with maintanance of stream biological integrity, maximum levels of air pollution consistent with present vegetation patterns, with human welfare, with human health, and the total volumes of emittants which correspond to those levels, maximum rate of construction consistent with stream integrity under different regulatory patterns for silt retention, maximum volume of automobile traffic consistent with secondary and primary air standard achievement, maximum residential population which can be sustained with long range water resources without sacrificing other uses, maximum energy supply which can be provided without infringing on areas of critical ecological importance. etc.

B. The specification of at least three possible models of development for a given area, representing respectively a low degree of further development, a moderate degree, and a high degree, and a description of the probable environmental, economic and social consequences for that area of each pattern, including such factors as transportation, housing and recreation patterns; probable extent of loss of open space, critical ecological areas and other presently embodied land values; demands for new social services and other infra-structure including highways and energy; any long term degredations involved in the pattern; and the degree of flexibility of future options left by the pattern.

C. An identification of the specific consequences of approved and proposed federal investments in highways, housing, public works projects, parks and recreation areas, and other physical facilities, on land use patterns, population size, critical ecological limits, and alternative development models as outlined above.

The purpose of making these additional criteria apply to the inventory process is to insure that the process is not confined simply to an academic gathering of scientific data. Data is crucial, but if it is to have an effect on the policy process at any level, it is essential that it be organized in ways which enable the probable consequences of particular policy options to be understood not only by the technicians who gather the data, but also by the public officials to whom they report it and by the public at large.

The purpose of a land use inventory, it seems to us, is two-fold: one, to insure that development does not occur in unequivocally undesirable patterns: that airports and residential communities are not accidentally located in ways which maximize the impact of high noise levels, that areas with impermeable soils are not designated for high density residential development with septic tanks, etc. But the second purpose of a land inventory should be to spell out the exact nature of the tradeoffs which ultimately cannot be avoided. It is one thing to say to the public in a given community, "Of course, to maintain a viable transportation network based on the automobile some land areas which we might have wanted to use for something else will be devoted to highways and parking lots." It is an altogether different proposition to spell out the number of acres of land that will need to be used in this way, the ternate uses which will be lost, and the other externalities resulting from continued reliance on the auto.

It is one thing to zone an area for development and to announce that the development will increase tax revenues by $3.2 million annually. It is another to conduct an actual study, to spell out the increases in revenues and the increased demand for municipal services, and to present the public not with a plan which experts have certified to represent "balanced growth," but to let the public know exactly what the balance to be struck looks like.

The example of Palo Alto, California, illustrates clearly this point; only when a consulting firm reported to the city that any possible pattern of development would cost the city more in services than it would bring in by revenues, and that the cheapest course the city could take would be to purchase the entire Foothills section in question, was it possible for the citizens, and their representatives, to make a rational decision.

It is our belief that the value of the land inventories proposed by this legislation would be immensely increased by requiring this sort of careful spelling out of the trade-offs involved in various possible plans of development.

In the absence of such requirements, the discussion of "balanced growth" in the bill may amount to little more than another cost-benefit ratio for which neither costs nor benefits are ever spelled out.

ZPG feels that the same considerations which lead us to call for a strengthening of the inventory sections of the bill also illustrate the need for several other kinds of modifications in the procedures outlined in the bill.

First, it is critical that in developing their land use plans, state agencies be required to specify the goals, the criteria, and the policies which they propose to implement. In the absence of such goals and criteria, there is no way in which the public can know whether or not some consistent balance is, in fact, being struck by states and localities. This has been one of the major faults of previous master-planning; agencies churn out lots of colored maps with cross-hatching, index numbers, and nothing whatever against which to evaluate the map.

In particular, state plans in our judgment should be forced to take direct cognizance of the role of population growth in forcing certain types of land use decisions on a community. The past pattern has been for agencies to take population growth in an areas as a given, as an independent variable over which they have no influence, and to plan to absorb, at whatever cost, whatever appears to be coming down the road. There are no doubt many communities which will, after they consider the question of desirable rates of growth, wish to plan for all the growth they can manage to achieve. Many communities, indeed, may feel that their overall health would be improved by a rate of growth higher than they are likely to be able to reach. And some will wish to adopt conscious public policies to reduce their rate of population growth. But the question of population growth is so critical, that without explicit consideration we fail to see how it will be possible for a state to define either critical environmental areas or key facilities. Both of these terms will vary widely in their meaning depending on whether an area is going to grow rapidly, slowly, or not at all.

For example, an area which is growing rapidly will have to consider whether or not open space itself may not be important enough that large open areas should be designated as critical environmental areas, whereas in a slow growth situation this may not be appropriate, since adequate open space will be preserved in any event.

Second, and this point will be made by other witnesses I am sure, the bill as presently drafted represents a definite step backwards in federal policy on public participation in environmental decision making. Even the initial EPA draft for this legislation wrote the word <u>adequate</u> into section 302 (12).

We cannot, as a locally based group, overemphasize the importance of this question of citizen participation. The present situation is systematically stacked in favor of development against environmental concerns, and for short-term as opposed to long term considerations.

The property tax, for example, is an immense force pushing decisions in the direction of greater exploitation, and it is not realistic, in the absence of clear guidelines from the Congress to the contrary, that local and state government will suddenly start resisting this financial pressure. Since, as already indicated, the development of clear guidelines at the federal level is clearly very difficult, and may even not be wholly appropriate, it becomes very important to involve local citizens in deciding the future of their own communities.

Finally, we would strongly oppose the inclusion of Section 303 (f), the Fannin amendment. We are aware that the argument has been made, and was accepted in floor debate last year, that this amendment has no force other than to make clear that this bill is not designed to change the present common law on the question of the police power and of takings. We agree that the law does not, even without this amendment, have that effect, and we do not believe that it should. However, we believe equally strongly that the common law in this area is presently in a state of flux, and that it should not be the purpose or effect of national land use legislation to put a stop to that process of evolution. We see a great deal of danger that this section will be read by many courts as constituting a federal freeze on this evolution, as an attempt by the federal government to impose a uniform pattern on state law. We oppose the inclusion of any provision which might have this effect, for we believe very strongly that the question of the exact limits of private rights in land ownership is one which needs to be worked out gradually in the laboratories of the fifty different states.

One of the major issues which ahas been raised most often about this bill is its limited character as an enabling act, one which does not provide concrete criteria and guidelines for the states. Similar questions have been raised on the issue of sanctions. We favor the restoration of the original sanctions to this bill, and we are also in support of the idea that the bill should spell out some substantive criteria. At a minimum, we would favor addition of the language embodied in EPA draft of the Administration bill, language which would at least provide for the protection of eco-system integrity in the critical environmental areas. We would also urge the committee to consider the type of substantive criteria suggested in testimony here and in floor debate last year.

We hope that the Committee would be able to make the admittedly fairly major modifications we have suggested. If this is not to be done, however, we would most strongly suggest that the bill be amended along the following lines. In the absence of such changes, we are afraid that this legislation will be unable to make the kind of major contribution to better land use planning that the Committee would like, and we would be hard pressed to say to our local people, "Here is something of real value for you."

1. The bill, as suggested above, should be amended, to require that state plans be based on clearly stated and defined goals, policies and criteria, sufficiently precise to permit judicial review of individual decisions, with adequate provision for citizen participation. This amendment is absolutely critical if the states are to have the power to override the federal government as presently provided; a reasonable case can be made for the federal government complying in its activities with a coherent, organized land-use plan which has been developed by the citizens and government of a state. No such case can be made for subjecting the federal government to arbitrary veto under state land use plans which have been developed without public participation and which have no clearly stated goals and policies.

2. Sanctions should be attached to the failure of a state to develop the land use inventory required by the bill, not primarily as a means of encouraging state compliance, but because in the absence of such a land use inventory it is clearly impossible for rational decisions to be made on the proper location of federal investment. It is a matter of financial responsibility for the federal government to insist at a minimum that the states have available to them the information necessary to properly locate facilities for which the federal government is going to pay. This seems particularly necessary at a time when these investment programs themselves are under attack for failure to reach their stated objectives. Lack of adequate information on the nature of the land resources affected is, of course, a major reason for such failures.

3. In the absence of a state plan, that volume of federal investment not affected by the sanctions process should be subject to a special land-use hearing process as outlined in the bill as introduced. This is a crucial provision.

We believe that these measures, which are clearly and definitely tied to unequivocal areas of federal interest, are not susceptible to the same arguments of federal encroachment as a set of criteria and sanctions attached to the overall planning process.

We thank the Committee for this opportunity to appear.

Senator HASKELL. I assume Mr. Pickelner will be the next witness.
Mr. PICKELNER. Yes, sir.

STATEMENT OF JOEL M. PICKELNER, NATIONAL WILDLIFE FEDERATION

I am Joel Pickelner of the National Wildlife Federation which has national headquarters at 1412 16th Street NW., here in Washington, D.C.

Ours is a private organization which seeks to attain conservation goals through educational means.

The federation has independent affiliates in all 50 States and the Virgin Islands. These affiliates, in turn, are composed of local groups and individuals who, when combined with associate members and other supporters of the National Wildlife Federation, number an estimated 3½ million persons.

We welcome this opportunity to testify.

Mr. Chairman, the National Wildlife Federation regards the establishment of a national land use policy as the top priority environmental legislation being considered by the 93d Congress.

For quite a few years we have been encouraging the Congress to develop a bold and comprehensive land and water plan. In 1971 at our annual convention, the federation adopted a resolution listing the major conservation issues and one of these related to national land use policy.

This is what we said:

> This organization is convinced that the time has come when the Nation must develop a coordinated and comprehensive plan for the best use of all its land resources, private and public.
>
> Such a plan, if coordinated between Federal, State, and local governmental entities, must result in the determination of priorities of land use best suited for the overall public good.

At the same convention, the federation adopted a resolution specifically relating to a national land use policy and a copy is attached for the record.

In this, we express the conviction that the Federal Government should offer every possible incentive to the States and their political subdivisions in developing a coordinated and unified approach to land use planning, one designed specifically to identify categories and set out priorities for land use.

We also are firm in our belief that the Federal Government should establish general criteria which State planning agencies must meet in order to qualify for Federal funding.

In the 92d Congress the National Wildlife Federation gave qualified support of S. 632, that is the version as it was reported out of the Interior and Insular Affairs Committee, not after it was extensively amended on the floor of the Senate. We are again prepared to support the general approach taken in S. 268, the successor to S. 632.

However, we are not satisfied that S. 268 in its present form is an adequate solution to the national land-use problem. The basic problem with S. 268 is that it is not an environmental act. We feel that the bill's emphasis on the need for an efficient system of land-use planning and decisionmaking is the wrong direction in which to move. Before it can correct the previous imbalance of land-use decisions in favor of

development, the bill must be established as an environmental act and one that requires opportunities for full public participation in all phases of its implementation.

First and foremost, the criteria for public participation must be expanded so that citizens are given opportunities for effective participation in the planning and decisionmaking processes.

One of the biggest dangers faced in drawing up national land-use legislation is the end product will be stacked in favor of development uses over environmental considerations. Past experience has shown us that, if given adequate opportunity, an informed public becomes an excellent watchdog over activities which affect the quality of life. Unfortunately, too often in the past and at present, the public has not been informed or been given access to the decisionmaking process.

A basic way of insuring that developmental interests do not dominate land use is to guarantee full citizen participation throughout all phases of the development of State and Federal policies. To accomplish this the bill should be amended to contain national standards or criteria which would insure citizen participation in all phases of Federal and, more particularly, State land-use planning and regulatory processes.

Also the Federal regional councils, in addition to including members of social and natural resource agencies, should include qualified and interested private citizens. In order to attract the most qualified citizen representatives it might be a sound idea to include some means of adequate compensation for private members.

Any legislation that is eventually signed into law will invariably require extensive State action. In order to encourage the States to implement appropriate land-use programs, an effective system of sanctions should be coupled with a strong incentives program.

Clear and enforceable sanctions in particular must be part of a national land-use policy. Such sanctions should be easily understood and enforceable, after a reasonable period of time, against those States which have not been able or willing to take on the necessary responsibilities to insure full implementation of land-use policies.

In the area of both incentives and sanctions, S. 268 is inadequate.

With regard to incentives, the funding levels of both the grant-in-aid and the Federal share are insufficient. Like the old saying, "you get what you pay for," we fear that at the funding level recommended in S. 268 the Federal Government will end up getting exactly what it paid for and that being a deficient program. In order to get this program operating as well as it should, as quickly as possible, the funding should be restored to at least the $100 million per year level that was contained in the original committee version of S. 632. Likewise, the Federal share should be increased from the present 66⅔ and 50 percent to at least 90 percent or 100 percent, if necessary. If it is not going to cost them anything, the States might be more willing to follow through and set up adequate programs.

Also, we feel that the duration of the bill, including the funding, should be extended from the present 5 to 8 years.

Again, past experience should help to point out that even when a good program is enacted, if it is not funded adequately it is doomed to failure.

The restoration of sanctions to S. 268 could be one of the most important moves that this committe makes. It is commonsense that funding growth-inducing public works programs when there is no statewide land-use program is poor management. We aren't recommending sanctions in the form of percentage reductions in State allocations under major public works programs, we are asking that all funding for these programs be discontinued until the State is in compliance; not impounded, discontinued.

The programs to which the sanctions apply would be those with land-use impacts on large areas and particularly those which stimulate further development. The programs are the same as were contained in the committee version of S. 632 with one addition. In addition to the Federal-aid highway program, the airport assistance program, and the program under the land and water conservation fund, we are asking that the interceptor and connector sewer grants allocated by the Environmental Protection Agency, EPA, and the Department of Housing and Urban Development, HUD, be withheld. There are no greater growth-inducing programs than the highway and sewer programs.

The importance of these sanctions is not wholly financial, it is rather related to the need to assure that Federal funds are properly spent in a way that enhances the quality of life of our citizens.

The importance of the problems we face in land use in this country is such that grant money alone is not adequate to bring about the institutional changes that are needed. It makes no sense to hand out grant money to do better planning and to improve land-use controls, while simultaneously more money is going out to build growth-inducing public utilities that are not subject to these emerging land-use powers.

If the name of the game is really controlling development the sanctions must remain as an integral part of any law which is passed. Without them any land-use law will lack any real teeth and as we have seen in the past some States will honestly attempt to comply while others will not.

Mr. Chairman, the National Wildlife Federation feels that land-use planning should require State agencies to include public goals and policy guidelines. Without these goals and guidelines the interested public including citizens and local governments cannot effectively evaluate the program. We do, however, feel that the Federal Government should set guidelines which allow sufficient flexibility for the States to implement their programs in whatever way best suits their particular situation.

Any attempt on the part of the Federal Government to set specific criteria will probably backfire and promote development rather than control it. This is something that we all fear, that in the end the law will promote development. The guidelines should be flexible enough to allow the States to set up programs which best reflect their particular situation.

We have long felt that an inventory and investigation of private land and water resources is needed before any serious attempt can be made to develop and implement regulatory or planning procedures.

In the past we testified in favor of a Federal program similar to the public land law review commission's effort on public land. We still

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feel that this national effort would be a good idea, but, we are convinced that the primary effort must be carried on by the States, and we fully support the intent of section 302 of the bill and hope that it will be faithfully carried out.

Mr. Chairman, the definition of "key facilities" in S. 268 specifically cites energy generation and transmission facilities as activities which tend to have more than a local impact on development. We agree that these facilities deserve special attention. Basically and philosophically power generation and transmission siting should be handled under land use legislation in order to properly interrelate this to other land use developments. However, taking into consideration the immediate energy situation, I think that a separate bill to regulate energy generation and transmission is a necessity. The energy industries tell us that we are in the midst of a power crisis which should be overcome by 1985. If that is truly the case then power facility siting regulation is needed as quickly as possible. I do not believe that the States acting under a land use policy bill similar to S. 268 would develop the programs quickly enough to effectively regulate the siting of energy facilities between now and 1985.

Therefore, we support the immediate enactment of a Federal power plant siting law. Efforts should be made in both pieces of legislation to eventually integrate power plant siting into the land use law.

Finally, Mr. Chairman, I would like to commend you and your distinguished colleagues for the past and present efforts you have made on behalf of land use. For some time now your committee has attempted to deal with the last of the big environmental issues.

Hopefully, this year's effort will bear fruit.

Thank you again for the opportunity of making these remarks.

[The complete statement of Mr. Pickelner and resolution referred to follow:]

S.268--LAND USE POLICY

STATEMENT OF JOEL M. PICKELNER ON BEHALF OF THE NATIONAL WILDLIFE FEDERATION BEFORE THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

February 7, 1973

Mr. Chairman, I am Joel M. Pickelner, Conservation Counsel of the National Wildlife Federation which has national headquarters at 1412 Sixteenth Street, N. W., here in Washington, D. C.

Ours is a private organization which seeks to attain conservation goals through educational means. The Federation has independent affiliates in all 50 States and the Virgin Islands. These affiliates, in turn, are composed of local groups and individuals who, when combined with associate members and other supporters of the National Wildlife Federation, number an estimated 3 1/2 million persons.

We welcome this opportunity to testify.

Mr. Chairman, the National Wildlife Federation regards the establishment of a National Land Use Policy as the top priority environmental legislation being considered by the 93rd Congress.

For quite a few years we have been encouraging the Congress to develop a bold and comprehensive land and water plan. In 1971 at our annual convention, the Federation adopted a resolution listing the major conservation issues and one of these related to National Land Use Policy. This is what we said: "This organization is convinced that the time has come when the nation must develop a coordinated and comprehensive plan for the best use of all its land resources, private and public. Such a plan, if coordinated between federal, state, and local governmental entities, must result in the determination of priorities of land use best suited for the overall public good."

At the same convention, the Federation adopted a resolution specifi-

cally relating to a National Land Use Policy and a copy is attached for the record. In this, we express the conviction that the Federal Government should offer every possible incentive to the States and their political subdivision in developing a coordinated and unified approach to land use planning, one designed specifically to identify categories and set out priorities for land use. We also are firm in our belief that the Federal Government should establish general criteria which state planning agencies must meet in order to qualify for federal funding.

In the 92nd Congress the National Wildlife Federation gave qualified support of S.632, that is the version as it was reported out of the Interior and Insular Affairs Committee, not after it was extensively amended on the floor of the Senate. We are again prepared to support the general approach taken in S.268, the successor to S.632.

However, we are not satisfied that S.268 in its present form is an adequate solution to the national land use problem. The basic problem with S.268 is that it is not an environmental act. We feel that the bill's emphasis on the need for an "efficient system of land use planning and decision making" is the wrong direction in which to move. Before it can correct the previous imbalance of land use decisions in favor of development, the bill must be established as an environmental act and one that requires opportunities for full public participation in all phases of its implementation.

First and foremost, the criteria for public participation must be expanded so that citizens are given opportunities for effective participation in the planning and decision-making processes. One of the biggest dangers faced in drawing up national land use legislation is that the end product will be stacked in favor of development uses over environmental considerations. Past experience has shown us that, if given adequate opportunity, an informed public becomes an excellent

watchdog over activities which affect the quality of life. Unfortunately, too often in the past and at present, the public has not been informed or been given access to the decision-making process. A basic way of insuring that developmental interests do not dominate land use is to guarantee full citizen participation throughout all phases of the development of state and federal policies. To accomplish this the bill should be amended to contain national standards or criteria which would insure citizen participation in all phases of federal and, more particularly, state land-use planning and regulatory processes. Also the Federal Regional Councils, in addition to including members of social and natural resource agencies, should include qualified and interested private citizens. In order to attract the most qualified citizen representatives, it might be a sound idea to include some means of adequate compensation for private members.

Any legislation that is eventually signed into law will invariably require extensive state action. In order to encourage the States to implement appropriate land use programs, an effective system of sanctions should be coupled with a strong incentives program. Clear and enforceable sanctions in particular must be part of a national land use policy. Such sanctions should be easily understood and enforceable, after a reasonable period of time, against those states which have not been able or willing to take on the necessary responsibilities to insure full implementation of the land use policies.

In the area of both incentives and sanctions, S.268 is inadequate. With regard to incentives, the funding levels of both the grant-in-aid and the Federal share are insufficient. Like the old saying, "you get what you pay for", we fear that at the funding level recommended in S.268 the Federal Government will end up getting exactly what it paid for and that being a deficient program. In order to get this program operating

as well as it should, as quickly as possible, the funding should be restored to at least the $100 million per year level that was contained in the original Committee version of S.632. Likewise, the Federal share should be increased from the present 66 2/3 and 50 percent to at least 90 percent or 100 percent, if necessary. If it is not going to cost them anything, the states might be more willing to follow through and set up adequate programs. Also we feel that the duration of the bill, including the funding, should be extended from the present five to eight years. Again, past experience should help to point out that even when a good program is enacted, if it is not funded adequately it is doomed to failure.

The restoration of sanctions to S.268 could be one of the most important moves that this Committee makes. It is common sense that funding growth—inducing public works programs when there is no state-wide land use program is poor management. We are not recommending sanctions in the form of percentage reductions in state allocations under major public works programs, we are asking that all funding for these programs be discontinued until the state is in compliance, not impounded; discontinued. The programs to which the sanctions apply would be those with land use impacts on large areas and particularly those which stimulate further development. The programs are the same as were contained in the committee version of S.632 with one addition. In addition to the Federal-Aid Highway Programs, the Airport Assistance Program and the program under the Land and Water Conservation Fund, we are asking that the interceptor and connector sewer grants allocated by the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) be withheld. There are no greater growth inducing programs than the highway and sewer programs.

The importance of these sanctions is not wholly financial, it is

rather related to the need to assure that Federal funds are properly spent in a way that enhances the quality of life of our citizens. The importance of the problems we face in land use in this country is such that grant money alone is not adequate to bring about the institutional changes that are needed. It makes no sense to hand out grant money to do better planning and to improve land use controls, while simultaneously more money is going out to build growth inducing public utilities that are not subject to these emerging land use powers. If the name of the game is really controlling development the sanctions must remain as an integral part of any law which is passed. Without them any land use law will lack any real teeth and as we have seen in the past some states will honestly attempt to comply while others will not.

Mr. Chairman, the National Wildlife Federation feels that land use planning should require state agencies to include public goals and policy guidelines. Without these goals and guidelines the interested public including citizens and local governments cannot effectively evaluate the program. We do, however, feel that the Federal Government should set guidelines which allow sufficient flexibility for the States to implement their programs in whatever way best suits their particular situation. Any attempt on the part of the Federal government to set specific criteria will probably backfire and promote development rather than control it. This is something that we all fear, that in the end the law will promote development. The guidelines should be flexible enough to allow the states to set up programs which best reflect their particular situation.

We have long felt that an inventory and investigation of private land and water resources is needed before any serious attempt can be made to develop and implement regulatory or planning procedures. In the past we testified in favor of a Federal program similar to the Public Land Law Review Commission's effort on public land. We still feel that

this national effort would be a good idea, but, we are convinced that the primary effort must be carried on by the States, and we fully support the intent of Section 302 of the bill and hope that it will be faithfully carried out.

Mr. Chairman, the definition of "key facilities" in S.268 specifically cites energy generation and transmission facilites as activities which tend to have more than a local impact on development. We agree that these facilities deserve special attention. Basically and philosophically power generation and transmission siting should be handled under land use legislation in order to properly interrelate this to other land use developments. However, taking into consideration the immediate energy situation, I think that a separate bill to regulate energy generation and transmission is a necessity. The energy industries tell us that we are in the midst of a power crisis which should be overcome by 1985. If that is truly the case then power facility siting regulation is needed as quickly as possible. I do not believe that the states acting under a land use policy bill similar to S.268 would develop the programs quickly enough to effectively regulate the siting of energy facilites between now and 1985. Therefore, we support the immediate enactment of a federal power plant siting law. Efforts should be made in both pieces of legislation to eventually integrate power plant siting into the land use law.

Finally, Mr. Chairman, I would like to commend you and your distinguished colleagues for the past and present efforts you have made on behalf of land use. For some time now your committee has attempted to deal with the last of the big environmental issues. Hopefully this year's effort will bear fruit.

Thank you again for the opportunity of making these remarks.

RESOLUTION ATTACHED

National Wildlife Federation
35th Annual Meeting, Portland, Oreg., March 4-7, 1971

Resolution No. 7

NATIONAL LAND USE POLICY

WHEREAS, the United States is blessed with vast and fertile land resources which have enabled Americans, with their energy and technological knowledge, to become the most productive of all Nations; and

WHEREAS, the pressures generated by an expanding human population are creating land use demands and conflicts in all parts of the country in manners formerly experienced only in urban areas; and

WHEREAS, present methods, procedures, and institutions for land use decision-making are inadequate to meet the Nation's present-day needs and too often fail to take into account the non-economic factors and long-range environmental effects; and

WHEREAS, present practices have resulted in uncoordinated, haphazard land use patterns which permit unnecessary waste and abuse of natural resources;

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation, in annual convention assembled Mar. 4, 1971, in Portland, Oreg., hereby expresses the conviction that the Federal Government should offer every possible incentive and assistance to the States and their political subdivisions in developing a coordinated and unified approach to land use planning, one designed to identify categories and set out priorities for land use; and

BE IT FURTHER RESOLVED that this organization is firm in its belief that the Federal Government should establish general criteria which State planning agencies must meet in order to qualify for continued Federal funding.

Senator HASKELL. Thank you.

Mr. Tupling.

Mr. TUPLING. The next member will be David Calfee of the Environmental Policy Center.

Senator HASKELL. Proceed.

STATEMENT OF DAVID CALFEE, ENVIRONMENTAL POLICY CENTER

Mr. CALFEE. I am David Calfee. I am here as Washington representative of the Environmental Policy Center.

I am here today on behalf of the Environmental Policy Center and a number of State and local conservation groups, including the Oregon Environmental Council, representing 85 State organizations, the Florida Audubon Society, SAVE of Georgia, and the Idaho Environmental Council. We appreciate the opportunity to appear today to discuss our perspective on the Land Use Policy Planning Assistance Act of 1973.

I should say at the outset that we are in complete accord with the committee on the major thrust of the bill, that land planning at the State level must be shaken up and revitalized.

Land is a nonrenewable resource. Commitments to development are for most practical purposes irrevocable. Land in traditional legal contexts has been treated as unique, but in the debate over planning and land use it is important to move beyond that legal fiction and distinguish those uses for which it is unique and those for which it is essentially a fungible commodity. My point is that for most developments, land is to some degree fungible—one parcel is as good as another, though perhaps a bit more or less convenient.

For the protection of ecosystems, watersheds, estuarine integrity and other natural purposes, however, land is in almost all cases unique. Another parcel will not serve essentially the same function as one which was developed and which carried a unique and valuable environmental value. This, of course, may seem self-evident, but I emphasize the point because too often in the discussions about development and planning and balancing economic, social, and environmental values, we forget that environmental values may deserve special consideration since they are uniquely tied to specific parcels of land when many developments can be directed elsewhere with no substantial loss.

One of the committee's concerns in the development of this land planning legislation has been to strike an appropriate balance between economic, social, and environmental interests. I have heard more than once that this legislation is intended to evenhandedly balance these interests, carefully steering away from a single mission bill which gives preference to any use.

I would like to suggest that this emphasis on evenhandedness and balance may in fact have the unintended consequence of preserving the status quo, and to a much greater extent than is generally perceived. When we are considering land planning and development we cannot ignore the dynamics of development. Economic incentives abound for land development. They have traditionally played such a strong role that practically all planning and development schemes are riddled with exceptions, variances, and other anomalies which defy rationalization. I agree with most of you, I am sure, that the

resulting patterns of development have imposed such sizable external costs that the time has come for regulation.

I suggest that much of the discontent and dissatisfaction with the current patterns of development has its genesis in concern for environmental values. Because their benefits are diffuse and at time distant, they have not generally been blessed with the same dynamic thrust behind their enhancement and protection as economic values, where millions of decisions are made daily to maximize gain at the expense of environmental values because the institutional forums to realize these gains are available.

In light of the dynamics of development, I am afraid that a policy of evenhanded treatment for economic and environmental values in land is akin to Anatole France's satirization of evenhanded French law which in its majesty equally forbade rich and poor to sleep under bridges.

The necessity for public policy to take cognizance of environmental values which are not now adequately protected cannot be fairly denied.

In 1969 under Senator Jackson's leadership the Senate moved to "declare a national policy which will encourage productive and enjoyable harmony between man and his environment and the biosphere * * *." In 1973 it is too late to back away from this commitment. I feel that land use planning legislation which fails—in either its policy statement or its implementation framework—to make it clear that environmental protection is the most important purpose is a step back down from that commitment.

Those of us who have watched the too often unequal competition between environmental values and other, admittedly legitimate, social and economic values despair at the prospect of a few more decades of balanced or evenhanded treatment. This is especially true when such treatment has tended to slight environmental values by failing to recognize and compensate for the dynamic stimulation and intense rather than diffuse impact which are characteristic of the competing values.

It would be unfortunate, indeed, to pass up this unique opportunity to partially redress the imbalance between environmental and other values in land planning and consumption—a word I use advisedly to emphasize the permanence of land use decisions and the virtual impossibility of repairing damage to environmental values once destroyed.

I do hope that in markup the committee will reconsider its policy of balanced treatment and instead emphasize environmental views and report a land use bill which has environmental protection as a prime area thrust.

Now, on specifics, I realize it is a very thorny problem with Federal control and guidelines seeming to interfere with land planning. I have tried to outline a method which will enhance environmental values without substantially interfering with State prerogatives through a series of procedural devices.

The committee has recognized the difficulty of substantive criteria that would apply nationwide, given diversity in climate, geology, geography, some communities want to grow, some have a mining economy, some are essentially suburban.

The first step is a requirement for States to explicitly lay out their own priorities and policy and criteria to implement those. No other

bills have laid it out explicitly to articulate a clear policy on what their own values are. So if you have a reference point, you can begin to challenge State development plans.

Now, if we are going to rely so heavily on State controls, it seems to me essential that in order to make sure State plans actually reflect local conditions and local aspirations and not the ivory tower perceptions of a few planners, it is necessary to beef up the public participation session in this bill. This means beefing up in planning, in revisions of plans, in the implementation process and gain a feedback into education.

The fear is that you have an ivory tower plan that nobody understands, people don't recognize the value of, and don't respond to.

I would like to see the States empowered to spend money to perform an educational function for the citizens to give the plan greater acceptability and credence in the communities.

In the planning process itself I think we have a fear that during the inventory, according to State criteria, we will identify areas which could qualify as areas of critical environmental concern and those areas in the end will not end up receiving that designation.

Now, what I would like to see from the committee, and this is the first step toward moving away from a balanced policy, is an explicit policy statement that to the maximum extent possible areas which fit State criteria and would qualify as areas of critical environmental concern receive that designation and the consequent protection under State law which goes with it. We feel that areas which qualify to the extent possible shouldn't be designated for other facility designations or left out of the critical environmental designation insofar as we can make that work.

What I would like to think of in terms of procedure is, when you have a piece of land which would theoretically qualify for protection as a critical environmental area, that before it receives another designation you have a local hearing on the issue to consider that specifically, whether it should get the critical environmental designation or some other.

On the land use program itself, the implementation phase of the bill, what I suggest is a permit system which applies to all development in any area which has been identified as having the characteristics which would make it eligible for designation as an area of critical environmental concern. This permit system would apply until the area was designated in some other fashion which would mean they would have to go through a local hearing, the process I described above. If it doesn't receive another designation it is eventually after being inventoried, designated as an area of critical environmental concern.

What I would like to see, again following State developed criteria, explicit criteria that you could refer to, prior to the approval of any development in that area, the applicant go through a public hearing process with adequate notice and bear the burden to show his plans in fact are consistent with the State program.

That is an outline of the procedural mechanisms which I think can give the bill an environmental thrust without getting into the thorny problem of substantive Federal guidelines which interfere with State control.

The last point I would like to make is that we really feel sanctions should be restored. Without sanctions, particularly in light of budgetary constraints which seem to be a political reality this year and for how much longer, we don't know, we have little faith in States which are not already in the process of developing land use legislation, and should be moved to do so.

[The full statement of Mr. Calfee follows:]

STATEMENT OF DAVID CALFEE, ENVIRONMENTAL POLICY CENTER, WASHINGTON, D.C.

Mr. Chairman, Members of the Committee, my name is David W. Calfee. I am a Washington Representative of the Environmental Policy Center. I am here today on behalf of the Environmental Policy Center and a number of state and local conservation groups, Including the Oregon Environmental Council (representing 85 state organizations), the Florida Audubon Society, SAVE of Georgia, and the Idaho Environmental Council. We appreciate the opportunity to appear today to discuss our perspective on the Land Use Planning Act of 1973.

I should say at the outset that we are in complete accord with the Committee and the major thrust of the bill: that land planning at the state level must be shaken up and revitalized.

Land is a non-renewable resource; commitments to development are for most practical purposes irrevocable. Land in traditional legal contexts has been treated as unique, but in the debate over planning and land use it is important to move beyond that legal fiction and distinguish those uses for which it is unique and those for which it is essentially a fungible commodity. My point is that for most developments, land is to some degree fungible—one parcel is as good as another, though perhaps a bit more or less convenient. For the protection of ecosystems, watersheds, estuarine integrity and other natural purposes, however, land is in almost all cases unique. Another parcel will not serve essentially the same function as one which was developed and which carried a unique and valuable environmental value. This, of course, may seem self-evident, but I emphasize the point because too often in the discussions about development and planning and balancing economic, social, and environmental values, we forget that environmental values may deserve special consideration since they are uniquely tied to specific parcels of land when many developments can be directed elsewhere with no substantial loss.

One of the Committee's concerns in the development of this land planning legislation has been to strike an appropriate balance between economic, social, and environmental interests. I have heard more than once that this legislation is intended to evenhandedly balance these interests, carefully steering away from a single mission bill which gives preference to any use.

I would like to suggest that this emphasis on evenhandedness and balance may in fact have the unintended consequence of preserving the status quo, and to a much greater extent than is generally perceived. When we are considering land planning and development we cannot ignore the dynamics of development. Economic incentives abound for land development. They have traditionally played such a strong role that practically all planning and development schemes are riddled with exceptions, variances, and other anomalies which defy rationalization. I agree with most of you, I am sure, that the resulting patterns of development have imposed such sizable external costs that the time has come for regulation. I suggest that much of the discontent and dissatisfaction with the current patterns of development has its genesis in concern for environmental values. Because their benefits are diffuse and at times distant, they have not generally been blessed with the same dynamic thrust behind their enhancement and protection as economic values, where millions of decisions are made daily to maximize gain at the expense of environmental values because the institutional forums to realize these gains are available. In light of the dynamics of development, I am afraid that a policy of evenhanded treatment for economic and environmental values in land is akin to Anatole France's satirization of evenhanded French law which in its majesty equally forbade rich and poor to sleep under bridges.

The necessity for public policy to take cognizance of environmental values which are not now adequately protected cannot be fairly denied. In 1969 under Senator Jackson's leadership the Senate moved to "declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the

environment and the biosphere. . . ." (National Environmental Policy Act of 1969, Section 2)

In 1973 it is too late to back away from this commitment. I feel that land use planning legislation which fails—in either its policy statement or its implementation framework—to make it clear that environmental protection is the most important purpose is a step back down from that commitment.

Those of us who have watched the too often unequal competition between environmental values and other, admittedly legitimate, social and economic values despair at the prospect of a few more decades of balanced or evenhanded treatment. This is especially true when such treatment has tended to slight environmental values by failing to recognize and compensate for the dynamic stimulation and intense rather than diffuse impact which are characteristic of the competing values. It would be unfortunate, indeed, to pass up this unique opportunity to partially redress the imbalance between environmental and other values in land planning and consumption—a word I use advisedly to emphasize the permanence of land use decisions and the virtual impossibility of repairing damage to environmental values once destroyed.

Land use is the focus of conflicting demands for competing social, economic, and environmental values. I would venture, however, that if the external costs and benefits of land use were to be fully reflected, the conflict would be more apparent than real. Absent a mechanism to effectively allocate and impose benefits and costs, environmental values are often undervalued. I sincerely hope that the Committee will reconsider its policy of balanced treatment and emphasize environmental values—and report a land use bill with environmental protection as a primary thrust. With this in mind I recommend a number of changes in S. 268 which, without interfering with the states' power to develop substantive policy, emphasize the bill's environmental purpose.

FEDERAL REQUIREMENTS ON PROCEDURE

One of the areas where the Committee requested discussion today was the role of federal requirements on procedure for land use planning and programs. This is one area where the bill could from an environmental point of view be substantially improved without stifling the initiative and innovativeness which can and should be encouraged among the states. Given the diversity of demographic, climatological, geographic, social, and economic conditions coupled with the wide range of sentiment on how to rank various values, the Committee, during its hearings, has often been warned of the difficulty in establishing substantive policies and guidelines which can satisfactorily be applied in all regions of the country. On many topics, not only the wisdom of federal substantive policies but their feasibility as well has been challenged, and the Committee has to date avoided such policies. One strength of the Committee's approach to land use legislation may be its recognition of the diversity of needs and opinions about the detailed substance of planning criteria. It seems apparent from the hearing record and the Congressional action on land planning to date that this Committee is not prepared to develop the comprehensive substantive criteria of a truly national land use policy. In the absence of such guidance, this legislation is merely a first step in the development of a national land use policy. As Senator Jackson has repeatedly emphasized, the bill is aimed specifically at establishing on the state level institutional structures which are at least necessary, if not necessarily sufficient, to rationalize land use planning and decision-making. We are in full sympathy with the objective of increasing the state's role in this decision-making, and feel that the state is the proper arena for resolving many of the conflicts between competing interests which must be balanced out.

In the absence of a substantive national policy however, there is a pressing need for states to articulate policies expressing the relationship of values to be considered in land use decision-making and the criteria for applying these to individual decisions. In the process of developing these policies, it is imperative that participation on the state and local level be sufficiently broadly based and intensive that the individual state policies accurately reflect regional needs and aspirations.

In its present form S. 268 does not go far enough in requiring states to develop explicit standards with sufficient participation to insure that the plans and programs represent not the ideas of a few ivory tower planners with colored maps and little touch with the local citizen. Experience with paper plans has demonstrated that to be implemented a plan must reflect the community's values and aspirations. It is axiomatic that they should be developed with a large degree of

public input. A less well-understood corollary is that they must be used to educate the public as to their value and meaning as well. S. 268 can and should be improved in all of these areas.

First, S. 268 does not require the states to develop explicit policies and criteria establishing the considerations relevant to determining the location and extent of critical areas and the kinds of uses and restrictions which will be allowed and required in those areas. Such a requirement would strengthen the framework for broad public participation in the planning and implementation phases of state programs.

Second, public participation in all of the relevant stages of the state and federal program—planning, revision, and implementation—should be clearly stated as one element of the national land use policy and spelled out in somewhat more detail. Other panelists will, I'm sure, cover this subject in more detail. Two specific suggestions, however, are for a "balanced representation of affected user groups" in Ad-Hoc Federal-State Joint Committees (Section 403(a)), and a specific requirement that significant revisions in the state program be made only following public notice and the opportunity for hearings (Section 303(a)(2)(F)).

Third, the state agency should be specifically authorized and encouraged to educate and involve the public in the planning and implementation process in order to smooth the way for the plan's acceptance.

THE PLANNING PROCESS

Section 301(a)(7) requires the planning process to include "the establishment of a method for inventorying and designating areas of critical invironmental concern." We have some fear that this provision is not itself strong enough to insure that areas which have the requisite characteristics to qualify for designation as "areas of critical environmental significance" will in fact receive that designation. There are two aspects of our concern here. First, there is the problem that areas fitting the criteria may be excluded, and second, since many of these areas are also in all likelihood suitable for large-scale development, development of regional benefit or key facilities development, we are concerned that the provision, as written, will allow intensive state-encouraged development to overlap and supercede the protective designation, despite the existence of unique environmental values.

The first problem is partially addressed in Section 304(a) which provides for a determination that the state has not excluded "substantial areas" of "major *national* significance," although it still leaves areas of less than national significance in limbo. The second problem, however, will not be remedied, even partially, until the bill is changed to express clearly that environmental protection is one of its primary goals. Specifically, we suggest that the bill should state explicitly, that Congress has determined as a matter of national land use policy that when an area meets the criteria which makes it eligible for designation as an "area of critical environmental concern" there is a presumption in favor of so designating it. This presumption is justifiable on the ground that the unique environmental values should be recognized and protected at least until it can be demonstrated that there are no feasible alternative sites to accommodate the competing dvelopment. Without such a presumption, we are afraid that the so-called "even-handed or environmentally neutral" approach in planning will, as it has so often in the past, encourage the repeated subordination and loss of environmental to other values. It is our feeling that areas found suitable on the basis of the inventory for designation as "critical environmental areas" should not be planned or designated in other categories until adequate notice and the opportunity for a public hearing on the issue are afforded locally.

THE LAND USE PROGRAM

There is one other procedural requirement which should be considered by the Committee in order to assure that environmental values are not slighted in the development and implementation of state land use programs. Like the presumption and public participation provisions in the planning process, this requirement leaves the states complete freedom to develop their own susbtantive criteria used to make the decision. The requirement merely forces the state to consider, in an open forum, the consistency of a proposed development with the state program. We proposed that states be required to institute a permit system to cover development in areas identified by the inventory as meeting the criteria for

designation as "areas of critical environmental concern." Prior to approval by the state agency, the applicant must demonstrate after adequate notice and the opportunity for a public hearing that his development proposal is consistent with the state land use program. This procedural requirement leaves the states free to develop the permit agency at whatever level of government they choose, and to judge the application solely on the basis of state substantive criteria, providing full latitude for creative experimentation among the states. This proceeding, in one step, insures that the environmental values which must be implicit in a national land use policy are given a full airing, but in a context consistent with the policy of promoting individual state substantive criteria for development.

SANCTIONS

It is our position that S. 268 should have its sanctions restored. Without sanctions, particularly in light of budgetary constraints which seem to be a political reality this year, we have little faith that states which are not already in the process of developing new land use legislation will be moved to do so. We agree with Chairman Jackson that sanctions are an integral part of this legislation and should be reinstituted.

Senator HASKELL. Thank you.

Mr. Tupling.

Mr. TUPLING. Joseph Penfold, Izaak Walton League.

Mr. PENFOLD. Thank you, Mr. Chairman.

First of all, as a Coloradan, I would like to congratulate you on your election to the Senate and to membership on this important committee.

STATEMENT OF JOSEPH W. PENFOLD, IZAAK WALTON LEAGUE

The league is a national, citizen conservation society with membership throughout the Nation. It is dedicated to the conservation and wise use of the Nation's natural resource wealth, its soils, woods, waters, wildlife, and in overall, the environment.

The league was organized over 50 years ago out of a growing disgust at the accelerating loss of prime fishing waters to unconscienable pollution. Within its first year, however, the league found that protecting waters from pollution involved proper management of the land itself and what man does to it. It can be said with truth that the league's concern with land use planning began at that time. We and others have been fighting what might be considered a rear-guard action ever since, the piecemeal approach, single issue by single issue.

Finally, and at long last, there is before this committee now an opportunity to take a major step toward comprehensive land use planning, which if carried through, adequately implemented and funded, can assure rational and reasonable development within a context of environmental protection.

[As long as population numbers burgeon, as long as individual demand for goods and services spirals, development is inevitable. The Nation's problem necessarily is to guide that development, employing essential restraints that are accepted by all levels of government and by the public.]

Essentially, this means a strong national policy. This should be the major thrust of the legislation, and I am confident that this is the purpose of the act and the intent of its sponsors.

In selecting one aspect of the bill to comment on, I was impressed by a sentence in the chairman's remarks when he introduced the bill.

He said, in part, "Rather, it must balance competing environmental,

economic, and social requirements and values, to avoid costly mistakes of both thoughtless, precipiate development and unwarranted, dilatory opposition to beneficial development."

We agree with that statement as a prime purpose of the legislation. We believe that its achievement, among other essentials, requires full involvement of the public both prior to and at the time of decision-making.

In our judgment, the public is the only body which can present the full spectrum of viewpoints to assure the true balances the Chairman spoke of.

A good analogy is the Federal water pollution program. Originating just a quarter century ago, it has successively been amended in 1956, 1961, 1965, 1966, 1969, and finally in 1972. At each step, there has been added public opportunity to become involved and increasingly is involved. It is increasingly better informed and constructively active as responsible citizens.

This Land Use Policy Act can take that history into account and maybe save a quarter century in one action.

Toward this end, we suggest that the public involvement provisions of the bill be strengthened and clarified:

To provide for national guidelines for public participation during the drafting of Federal regulations and prior to their adoption;

During formulation of State land-use programs; and prior to adoption by the State;

During review of a State program by the Federal Administrator;

During both State operation of its planning and regulatory processes and Federal administration of its responsibilities for the program on a continuing basis.

Provide for citizen representation on any State or Federal advisory boards, and for financial support to citizen education programs and public participation projects.

In connection with any application for a grant of Federal funds under the act, provide that such application be accompanied by a positive statement indicating the opportunity extended to the public to participate, the degree to which the public did participate and the tenor of its views and recommendations.

In conclusion, Mr. Chairman, let me repeat that the ultimate success of the Land Use Policy Act will ultimately depend on support of the general public. We have learned from the water pollution program that support will be based on public understanding and public involvement.

The Izaak Walton League, and I am sure all other citizen conservation and environmental societies and groups recognize their own responsibilities in this area, and are fully prepared to discharge them.

We appreciate the opportunity to present our views on this highly crucial measure.

Mr. TUPLING. Mr. William Duddleson of the Conservation Foundation.

Mr. DUDDLESON. Mr. Chairman, in view of the time and our understanding with the committee staff on total time for our panel, I am going to just make three brief points and let us move to our final speaker.

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We are very disappointed at what might be called the environmentally neuter aspects of the bill.

The bill appears to be a back-peddling from the National Environmental Policy Act that originated in this committee 4 years ago.

Indeed this bill, S. 268, could be substantially improved in this respect merely by including in its statement of policies a reference that the policies and purposes set forth in this land use act are supplementary to those set forth in the National Environmental Policy Act of 1969.

I would also like to emphasize the importance of stronger provisions guaranteeing citizens of the United States, regardless of what State they live in, opportunities for effective participation in not only the State land use planning processes, but the State land use regulatory programs that this bill would stimulate and support.

Just one further thought—Mr. Chairman.

Senator JACKSON. May I interrupt for just a moment. I just want to—I have some people that I am meeting with right back here and I just wanted to thank you for helping to set up the panel and thank each and every member of the panel.

I just feel very strongly that we have to strengthen this bill so that legislators and Governors can really take some effective action.

I think we have had some good suggestions here. I have been looking at the statements. Unless we have some incentive to the States to do something, I am not so optimistic that we are going to get effective action.

This is in the best interest of the future economic well-being of the country as well as the future environmental well-being of the country because the decisionmaking process is just broken down in both respects. I wanted to thank each and every member of the panel for participating and helping.

There has been a number of good suggestions. I think the importance of people participating is critical because you can't maintain a good program in this area unless people are involved.

I think the participation of citizens in the decisionmaking process, as Joe Penfold alluded to, is so important and I want to commend the panelists and express my appreciation, Mr. Chairman, for their help here.

We will go over the record carefully so that we can, I hope, come up with the best possible bill and we are going to need a lot of help on the floor of the Senate. All you have to do is read the last debate we had last fall, and I think you all understand what happened.

You go right ahead, Mr. Duddleson. I apologize for breaking in.

Mr. DUDDLESON. Thank you very much, Mr. Chairman. We appreciate the sentiments and many people would like to help you do those things.

Let me just make one final point. As this bill has gone through the process in the last 3 years, it seemed to me that at each stage of the legislative process—and now I am speaking of the importance of not only the environmental thrust of the bill, but to sanctions—the bill has become more like the status quo.

By that I am referring explicitly to the existing major Federal financial assistance programs in this field, such as the comprehensive financing program administered by HUD. This has provided many millions of dollars to the States for land use planning since 1954.

The missing link, and the genius of this bill, if it can be retained, is that the existing Federal assistance program in this field does not require implementation. There is no requirement that the planning prepared with the help of Federal money be implemented. There is no requirement that the land be regulated in accordance with the planning progess.

So without sanctions one may ask why bother with this bill?

It also should be noted that the environmental quality conditions in the existing HUD "701" program appear to be stronger than S. 268 in its present form would provide. It would be ironic, indeed, if that is the way things work out.

[The complete statement of Mr. Duddleson follows:]

Testimony of the Conservation Foundation before the U.S. Senate Interior and Insular Affairs Committee on S.268, the proposed National Land Use Policy and Planning Assistance Act;

February 7, 1973

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February 7, 1973

Summary of recommendations of the Conservation Foundation to the Senate Interior Committee on S.268, the proposed National Land Use Policy and Planning Assistance Act.

These aspects of the bill appear most in need of remedying and strengthening:

I. Substantive

a. The environmentally neuter statements of findings, policies and purposes, including a lack of substantive national land-use policies and criteria to protect the quality of the environment.

b. The lack of a requirement that States develop substantive land-use policies and criteria to protect the environment.

c. The lack of provisions for issuance of national policy guidelines or criteria within the framework of national policy -- (a) above.

II. Procedural

a. Public participation; public education.

b. The provision for State override of federal activities is questionable national policy in its present form.

c. Lack of priority to "areas of critical environmental concern" over the other key elements of a State land-use program; inadequate provisions for "areas of critical environmental concern of national significance."

d. Lack of sanctions and inadequate funding.

Mr. Chairman, I am William Duddleson, representing the Conservation Foundation, a nonprofit research and education organization. We appreciate your invitation to testify on legislation that may so greatly influence the way our nation will deal with its environmental problems during the years to come.

Let me say first of all that we applaud the Committee's decision to hold further hearings on the proposed National Land Use Policy and Planning Assistance Act. We heartily concur with the Chairman's statement of January 9 that critical questions and issues surrounding the Senate-passed land-use bill of 1972, S.632, (which I understand to be virtually identical with S.268) need to be more fully explored.

Relation to Environmental Policy

I would like to address at the outset one issue that isn't specifically mentioned in the Committee focus paper on S.268. That is, does the emphasis on a "balance" among environmental, economic and social considerations set forth in Title I of S.268 -- the Statement of Findings, Policies and Purposes -- adequately express the national interest in

protecting and enhancing the quality of the environment?

Certainly, in a broad, philosophical sense such a balance is appropriate and essential. But, as a practical matter, I doubt that it can be made a workable basis for national policy. The tools for quantifying the environmental costs and benefits of land-use activities are still primitive, and almost invariably underestimate the environmental effects of land-use decisions. We are probably years away from even identifying some of the major environmental effects resulting from our pattern of land use. Realistically determining the costs to society of environmental degradation resulting from land use is an even more remote possibility.

So, before the admirable balance called for in S.268 can be achieved in reality, the environmental (and, of course, social) considerations which should be brought to land-use decisions must be put on an equal footing with economic considerations. Certainly, that has been the major purpose of the new state land-use programs -- ranging from the rural states of Vermont and Maine to more urban states like Florida and California -- which focus on environmental protection as the central purpose of their programs.

Behind the responses of these states, behind these new state land-use regulatory programs, is a concern that scenic, recreational, or natural-resource values held to be of regional

or statewide importance are being threatened by uncontrolled growth or indiscriminate development. Thus, one can characterize these state concerns, by and large, as basically inspired by environmental, rather than economic concerns. A sense of scarcity, and a concern for limits pervades the new breed of land-use permit systems being adopted by these pioneering states.

For example, Maine's site-location law of 1970 was a reaction to proposals for construction of oil-supertanker facilities which were seen as threatening the beauty of the coast, and lobstering and shellfish operations. Vermont's statewide Act-250 land-use permit law of 1970 was a response to large second-home development proposals that would have set in motion environmental impacts and demands for public services far beyond the capacities of rural Vermont towns. Georgia's 1970 legislation requiring state permits for coastal wetlands projects reflects concern over indiscriminate dredging and filling for residential and industrial developments. In Florida, a severe drought affecting both water quality and supply triggered last year's strong state legislation controlling land as well as water development. Elsewhere, destruction of biologically productive and beautiful coastal wetlands, and power-plant siting and attendant air and water pollution problems have been the initiating influences.

[So, the concerns that most commonly have triggered state action have followed recognition that critical environmental areas or resources are not receiving adequate protection from major land-use decisions made exclusively by fragmented, tax-starved local jurisdictions.] [In one state -- Massachusetts -- a social-justice concern, a desire to insure dispersion of low-income housing, prompted state land-use action.] [But environmental objectives are the predominant objectives of state land-use legislation.]

It would seem appropriate, therefore, for S.268 to support at the national level the initiatives begun by these states. Thus, Title I should, we suggest, declare that protection and enhancement of the quality of life, including the protection and enhancement of the bio-physical environment which is the human life-support system, is the primary, undergirding purpose of a national land-use policy. This would give a direction and substance to expression of national policy that does not yet exist in S.268.

We commend two specifics for the Committee's consideration. One is Title III of S.632 as introduced in 1971. Many of the findings, policies and purposes in that Title are similar to those found in S.268; but in S.632 as introduced, the emphasis was on environmental and ecological considerations. In S.268, we find this has been revised to environmental and

economic considerations.

Second, we commend to the Committee's attention the statement of purpose and policy set forth in the National Environmental Policy Act of 1969 (P.L. 91-190). The essence of this statement could appropriately be transfered to Title I of a National Land Use Policy Act -- either directly or by reference, or both. [Marked sections that seem most appropriate for a national land-use policy law, together with a suggested policy statement, are submitted as Attachment A.]

NEPA is, of course, applicable to all federal activities. But the quality of the human environment is so significantly and pervasively affected by land use that it would be appropriate for S.268 to take notice of the relevance of the substantive policies set forth in that Act.

Thus, we suggest that Title I of S.268 contain something like the following:

> The policies and purposes set forth in this Act are supplementary to those set forth in the National Environmental Policy Act of 1969. (P.L. 91-180).

Public Participation

A second issue, listed in the Committee's focus paper under question 9, deserves special emphasis: public participation.

S.268 does call for an adequate state land-use planning process to include the conducting of public hearings (sec. 302(a)(12)), and the providing of opportunities for public participation in this process and in formulation of rules for this process (sec. 302(a)(13)). The state land-use planning agency is "to have authority" to conduct public hearings and to make public land-use information and hearing records (sec. 302(b)(5-6)). An adequate state land-use program (which includes the land-use regulatory process) is to include "methods of implementation" for disseminating information to the public, and for public participation in program development and in formulation of rules for program development and administration (sec. 303(a)(2)(F)).

This is useful so far as it goes, but in our view is too limited to deal adequately with the need.

One unfortunate void is any provision for public participation in the operation of the state land-use program, including the land-use regulatory process which is the heart of the matter. Further, there is no assurance that the program's

"methods of implementation" be used effectively or, indeed, be used at all. [Broadly-based citizen understanding and support seems to be an essential element of the successful state land-use programs.] Experience in related federal/state programs -- for example, air and water quality and outdoor recreation -- shows that citizen understanding and support can be secured only as citizens have opportunities for effective participation in not only planning processes, but also in decision-making processes. In the context of this program, this means the end-product -- land regulatory processes.

It is important -- for both state officials and interested citizens -- that public participation not only be reasonably efficient and not excessively costly or time-consuming, but also productive and effective.

Towards these ends, we suggest that the public participation provisions of this bill be both strengthened and clarified, as follows:

-- Clearly state that effective public participation in both state and federal aspects of the program is a central element of a national land-use policy, and that providing effective opportunities for such public participation is a purpose of this act;

-- Provide for national guidelines or criteria for

the critical aspects of public participation. For example, national guidelines or criteria would appropriately be applied to assure opportunities for public participation at each of the following stages:

(1) During the drafting of federal administrative regulations or guidelines to implement the act;

(2) Prior to adoption of the federal regulations or guidelines;

(3) During formulation of state land-use programs;

(4) Prior to formal adoption of a program by a state;

(5) During review of a state program by the federal administrator; and

(6) During both state operation of its planning and regulatory processes and federal administration of its end of the program, on a continuing basis.

-- Provide for citizen representation on any state advisory boards and federal advisory boards provided for in the bill (and which now would be limited to local and federal officials);

-- Authorize federal financial support for state and citizen education programs and public participa-

tion projects that show promise of demonstrating improved methods that would be of broad utility elsewhere.

(Vermont currently provides an instructive example of how such supported education and participation activity can work. In the initial stages of development of Vermont's "Land Capability and Development Plan" -- now before the legislature -- the state Environmental Board held public meetings to get ideas. After a draft plan was prepared, it was sent to all municipal and regional planning commissions in the state for comment. A copy was also sent to each householder in the state! Then followed public hearings and some subsequent revision before the document was sent to the legislature by the governor last month. The Environmental Board was assisted in providing for all of these public participation processes by the Environmental Planning Information Center (EPIC), a project of the Vermont Natural Resources Council. The Council is a statewide organization of environmental groups. The project was made possible by grants to the state Environmental Board by the National Science Foundation and the Ford Foundation, and

the state agency in turn contracted with the Council to conduct the project. This was admittedly experimental; but the apparent success of this working relationship suggests that the federal government should encourage such educational and participatory actions.)

(In Iowa, an educational project co-sponsored by a committee of the state legislature and the Iowa League of Women Voters -- the Iowa Land Use Policy Conference, held last June -- provides another example.)

The basic questions involved here are whether the Congress should seek to provide effective opportunities for citizens of the United States to participate in state land-use planning and regulatory processes that are financially assisted by the federal government, and -- if so -- how this bill should be revised to help assure that citizens in all states will, in fact, have those opportunities.

We feel that Congress should undertake this task, and, accordingly, we are asking you to consider our suggested amendment language on public participation. [See Attachment B.]

We should also like to address several of the other

policy questions set forth in the Committee's issue-focus paper:

Flexibility and Specificity in Federal Requirements

Our reading of the bill indicates not only that the states will have the greatest possible flexibility in formulating state policy, but that there is no clear requirement that the states develop substantive land-use policies. We believe that S.268 should provide that the states actually do develop discrete substantive land-use policies, as a condition for continuing federal financial assistance.

Definition of State Land-Use Program

This can be done by defining a state land-use program to include statements of the state's goals, objectives, and policies, as well as criteria for applying the policies to individual land-use decisions. Such a definition appears in the Coastal Zone Management Act of 1972 (sec. 304(g)), and what we are suggesting would conform the two laws on this point.

As it now stands S.268 does, fortunately, require the states to demonstrate "good faith efforts . . . to implement

the purposes, policies, and requirements of its state land use program" as a condition of eligibility for continuing grants for program implementation. There is, however, no provision in the bill for explicit expression by a state of the goals, objectives and policies which, logically, should provide the very foundation for a state land-use program.

We suggest that developing statements of goals or objectives, policies and criteria should be a primary function of the state land-use planning agency -- and that the agency should be encouraged and supported in its efforts to develop these statements with opportunities for public participation.

The end result of this ought to be a working document that provides in positive, tangible for, which all interested persons may see, direction and purpose for a state's land-use program, and establishes a policy framework for land-use decisions by state and local officials and agencies.

This approach has been taken by some of the pioneering state land-use programs.

One example is the San Francisco Bay Plan, prepared by the San Francisco Bay Conservation and Development Commission and adopted by the California legislature in 1969. The Bay Plan is not at all the typical local zoning document. Rather, it consists essentially of a series of policy statements to

which the Commission and the State are committed. That is its genius. And in the minds of many who have been involved with this Commission, that is the primary reason for the Commission's success in implementing the plan through regulatory processes. [A Conservation Foundation book on "BCDC" -- "The Saving of San Francisco Bay" -- is submitted for the Committee's information and files.]

Another example is Vermont. The Vermont legislature now has before it for adoption or revision a "Land Capability and Development Plan," prepared by the state's Environmental Board as required by the Vermont Environmental Control Act (Act 250 of 1970). It is not a "zoning" plan in the narrow sense of the word -- there are, for example, no maps showing where development will or will no occur. Rather, the plan sets forth a series of goals and principles for using land, together with criteria for applying the principle to decisions -- for issuing permits. (Some sample pages from the Vermont plan are included at the end of this statement as Attachment C.)

The Plan includes a statement of objectives. The objectives are broad. Examples: to ensure "that future generations may enjoy a quality environment by . . . protecting the vital processes that support the ecological cycles within the environment," and to protect "significant natural areas and locations of special

educational, scientific or historic value."

Then, policies and criteria for applying the policies to land-use permit applications are set forth under three broad topics -- Development, Resource Use and Conservation, and Government Facilities -- which ideally will guide the state in achieving its broad overall objectives. (Examples of a "policy" and a "criteria" are included in Attachment C.)

There is no reason to concern ourselves here further with the substance of the Vermont plan's policies and criteria. The point is that they are identifiable, discrete statements -- developed by the state Environmental Board and presented in a form that permits any interested person to understand them. [Attachment D is a suggested amendment on this point.]

Federal Requirements on Policy

National Policy Guidelines

We suggest that S.268 shoudl provide for the development and issuance to the states by the federal government of national guidelines or standards for substantive land-use policies to guide the state land-use program. The Council on Environmental Quality and the Environmental Protection Agency

should have primary responsibilities in developing these substantive policy regulations, in cooperation with the administrator of the Act, within the framework of an environmental policy statement in the Act (as recommended earlier).

We are a national as well as a family of states, and on occasion it is necessary for the national interest to take dominion over that of any state, in matters of land use as elsewhere.

[Encouraging the development of 50 separate state land-use policies -- as if the old system of autonomous local control should simply be transfered to the states and writ large -- would deny the very notion of national interest, and deprive the states of essential guidance that they have a right to expect.]

S.268 should permit federal guidelines or standards to be written on an interstate-regional basis. Uniform national standards may not be appropriate at this time for some aspects of land use, but regional standards would provide relatively consistent geographic, climatic and environmental characteristics. [Federal standards and guidelines also should give special consideration to the 30 or more metropolitan areas that are interstate in scope.] Development of regulations for regions and metropolitan areas should be a joint venture

between federal agencies (Interior, CEQ, EPA and HUD) and the states, and should involve balanced representation of federal, state, local government and public representatives.

State land-use programs should be expected to meet whatever minimal standards are promulgated in other federal legisaltion, executive orders and other administrative guides. For example, federal laws and executive orders that relate to federally-assisted projects in high-hazard land-use situations such as flood plains and earthquake areas should apply to federally-assisted state land-use programs.

The right of a state to develop stronger environmental-protection policies and regulations than called for by the federal government should be expressly provided for in the bill. Establishing federal guidelines that will set forth minimum acceptable standards for a state program should operate to protect, not undercut or pre-empt, those states that have or will develop in the future stronger land-use programs. The common denominator mentioned in the focus paper need not be the lowest, and would be better than no denominator at all. Unless there is some consistency of standards among the various state programs, development will tend to concentrate in those states with the weakest land-use environmental standards -- in those states least capable of striking a "balance" between

environmental quality and short-term economic gain.

The State Override Issue

Without a far greater degree of control over the substance of state land-use policies, section 306(a) presents a potentially serious threat to the environment. Section 306(a) would invest the states by law with substantial control over federal actions. This is contrary to existing law and traditional practice: that the federal government prevails when federal and state policy or actions come into conflict. [For example, it is doubtful if all our national parks and monuments would have been established had state concurrence been required.]

Section 306(a) requires that federal activities affecting land use shall be consistent with approved state land-use plans and programs. Exceptions to state control can be made "in cases of overriding national interest," as determined by the President.

In recommending the state-override concept, Administration spokesmen have expressed hope that the power which the legislation would delegate to the states would be an incentive for them to participate in the program. And this unprecedented control over federal actions may indeed be an inducement in some cases. Yet it is equally clear that in some situations, this unusual

states' rights incentive could result in action, or inaction, contrary to the national interest. For just as some local land-use decisions have an impact beyond a single jurisdiction, others have impacts beyond the boundaries of a state.

Theoretically, in such cases, Presidential actions would protect the national interest. But as a practical matter, given enactment of the states' rights provision in the bill, it is likely to be a rare occurence when a federal agency official prevails upon the President to exercise the "overriding national interest" exception to order a federal agency to go forward in the face of state opposition expressed through its land-use program.

The "state override" provision would be of less concern if exceptions in "the national interest" could be made at a lower level than the Presidency. The Coastal Zone Management Act of 1972 -- which contains a similar provision -- allows the Secretary of the Department administering the Act to make these exceptions, and this appears to be a more workable arrangement.

But, even with this change, the provision is still questionable. For one thing, [it is an abrogation of federal resonsibility to permit the states to establish national land-use policies for federal activities on non-federal lands] -- even though developing and maintaining such policies is a primary purpose of S.268 as set forth in Section 103(e): "[it is

the purpose of this Act] . . . to develop and maintain a national policy with respect to federally conducted and federally assisted projects having land use implications . . . ."

There could be a national public interest in delegating this important responsibility to the states if it were assured that all state land-use programs would be in the national interest. But, since S.268 provides almost no federal voice in the substance of state land-use programs, federal programs would be subject to the whims of any environmentally unsound state programs (as well as to state programs based on environmentally informed policies).

I recall an Interior Committee staff memorandum on S.632 -- quoted in the Committee's report on that bill: (federal) review would be for the purpose of determining whether the (state) program will be effective, not whether it is 'good' or 'bas'." But should the federal government provide incentives to states to develop and operate "bad" land-use programs?

So we suggest that this state-override provision should be omitted unless the federal administrator is authorized to issue substantive environmental guidelines or standards to guide state land-use programs, and is further authorized to review the substance of state programs for compatibility, and unless the finding of overriding national interest can be made

at a lower level than the Presidential level.

Federal Requirements on Procedure

There are several requirements in S.268 that we suggest be altered -- besides those affecting opportunities for public participation.

Areas of Critical Environmental Concern

One relates to "areas of critical environmental concern." S.268 should require states seeking grants to give priority to these areas over "areas impacted by key facilities." Both are required to be inventoried and designated; but the bill should make clear that areas inventoried and/or designated as of critical environmental concern should not be used for siting "key facilities." S.268 should provide for national guidelines that define minimum national standards for inventorying areas of critical environmental concern.

We suggest that S.268 encourage implementation of regulatory processes by the state land-use planning agency (or regional planning agencies or commissions subject to state review) during the critical interim period between establishment of the state planning process and full implementation of

the state land-use program. This interim regulation by the state should be exercised over "areas of critical environmental concern," as inventoried and designated by the state compatible with the national guidelines. This can be encouraged by supplementary financial incentives to states which adopt interim controls.

One efficient and effective method for exercising such interim state control is set forth in California's Coastal Zone Conservation Act enacted by the state's voters last November 7. This provision, Chapter 5 of that Act, is based on the successful experience of the San Francisco Bay Conservation and Development Commission during the interim period when it was preparing the San Francisco Bay Plan.

There is a second procedural question related to areas of critical environmental concern. Section 304(a) of S.268 states that, as a condition of continued grant eligibility after five years, the Secretary shall review the State program and determine that "the State has not excluded any substantial areas of critical environmental concern which are of major national significance and require special planning and management." Given the policy neutrality of S.268, this provisions does not, in fact, guarantee that state planning and management of these areas of national significance will

be done in an environmentally-informed manner. Therefore we suggest that the Secretary make a determination that the state is demonstrating good-faith efforts to assure that management of these areas is not **adversely affecting the quality** of the environment.

We suggest that areas of critical environmental concern of national significance be defined as including all such areas inventoried and/or designated by the state in accord with the national guidelines for these areas.

In the absense of such an arrangement, we suggest that the last part of section 303(a) -- which requires the Secretary, at the request of a Governor, to submit to the state in advance a list of all of the critical areas he considers of national significance within the state -- be stricken. Such a procedure could conceivably encourage some states to minimize areas designated for "special planning and management." While the Secretary should be expected to advise the state, in advance, of areas he considers to be of national significance, he should not be limited to that list when he reviews the state program. To have it otherwise, for one thing, tends to nullify the benefits of public review. We can expect that the process of public review of state land-use programs -- after submission to, but prior to approval by, the Secretary --

may serve to identify areas of national significance not previously identified by either the state or the Secretary.

EPA Review Role

We suggest that the broad review powers granted to the Department of Housing and Urban Development set forth in section 302(c) also be given to the Environmental Protection Agency. Besides the review powers already given to EPA, section 302(b) should state that the Administrator of EPA must be satisfied that the state land-use planning process and program meet the requirements of the act pertaining to areas of critical environmental concern, large-scale subdivisions, and areas impacted by key facilities. There are compelling reasons for giving EPA this broader review power. [Large-scale subdivisions present major problems in terms of sewage treatment and water or solid-waste pollution abatement.] [Key facilities such as airports and power plants present major air-pollution problems; airports cause noise pollution, and power plants cause thermal pollution of water.]

In addition to the elements of the statewide planning process described in section 302, the planning process should include development of criteria for determining the "carrying-

capacity" of a given area for development -- the point at which further alteration would irreversibly damage healthy functioning of natural systems. The purpose would be to help ensure that the data collection called for in section 302 is developed in a form that actually provides a basis for land-use decisions.

Definitions

We have already suggested that a state land-use program be defined in the definitions section. We also suggest:

-- that the definition of "areas of critical environmental concern" be modified to indicate that the state's identification of the extent of such areas be compatible with national guidelines for identifying and designating such areas.

-- that the list of critical areas include aquifers, aquifer-recharge areas, slopes in excess of 12°, and natural areas.

Interstate Land-Use Decision-Making

S.268 now has standard consult-and-coordinate provisions. It calls on the states to consult with Federal agencies, and the

federal agencies to disclose their plans to states and to review the state programs. In addition, the land-use bill permits establishment of ad-hoc federal-state joint committees to work on mutual problems involving federal lands.

The Coastal Zone Management Act of 1972 goes farther in this respect. It says that a state may develop its coastal management program, in part, via a regional or interstate agency, which may include Federal representatives. And officials of the National Oceanic and Atmospheric Administration (NOAA), who are administering this act for the Secretary of Commerce, already have said they are receptive to using field-level, state-federal, joint-action mechanisms (such as river basin commissions) where these are in place, if the states involved choise to use them.

Such joint federal-state participation in the field, in both planning and regulation of land use should be standard operating procedure, built into S.268 as a mandatory feature from the beginning. Although a state would need to bear responsibility for its land-use planning and regulatory programs, a joint-action federal and interstate working arrangement -- as distinguished from the usual paper-passing kind of coordination -- could prevent many of the inevitable intergovernmental conflicts from becoming "federal cases." Understanding would be facilitated, and polarization and confrontation diminished, if the various states and federal government worked together from

the beginning.

The San Francisco Bay Conservation and Development Commission (BCDC) offers a prototype for successful joint action and could easily be transferred to the 30 or more major metropolitan areas that are interstate in nature. This intra-state coastal zone management agency includes not only five state officials, 13 representatives of the public, but two federal representatives. The federal members were designated in the 1969 BCDC state law to represent the national interests in water pollution control and in navigation and flood control. BCDC leaders say that the liaison and counsel provided by the federal members has been vital to the Commission's success. The point here is that a national land-use policy should support such practicable joint-action efforts.

Sanctions and Funding

We suggest returning the level of funding, and the federal cost-share percentage, to the levels expressed in the Committee-reported version of S.632.

We suggest sanctions similar to those in Committee-reported S.632 -- that is, that an increasing percentage of federal funds for airport, highway and land and water conservation funds be withheld until the state land-use program

becomes eligible. In addition, we favor withholding of federal funds for sewage-line construction until the state land-use program provides reasonable assurance that such funds will be well-placed.

The sanctions should not be considered a penalty put upon a non-complying state, but rather a logical consequence of sound national management and investment policy. Sanctions can provide protection for states that have developed land-use planning and regulatory programs; they will provide a degree of assurance to these states that they will be able to compete for their fair share of orderly economic development on approximately equal terms with other states. Otherwise, some states -- those with the least restrictions on land use -- could become havens for industries seeking minimal environmental controls.

A higher level of federal funding is needed to make any such sanctions meaningful -- to insure that a state will have financial resources to develop and implement an effective land-use program.

Without effective sanctions, the program this bill would authorize would be not essentially different from an existing federal grant program for planning -- the Comprehensive Planning Assistance program of grants to state and local governments which is administered by the Department of Housing and Urban Development. This program has provided hundreds of

millions of dollars to the states and local governments since it was first authorized in Section 701 of the Housing Act of 1954 and it is still going strong; the Administration's budget request for this program for fiscal 1974 is $110 million. The grants are made to support land-use planning -- among other kinds of planning. The federal cost-share ranges from two-thirds to three-fourths. The missing link in this "701" program, and presumably a major justification for the consideration of S.268, is that implementation -- that is, land-use regulation to implement the planning financed by these grants -- is not required. So with sanctions, without an action-forcing mechanism to secure implementation, some may ask, "Why bother with a National Land Use Policy and Planning Assistance Act?"

It should also be noted that at each stage of the process of considering and shaping a National Land Use Policy Act during the last three years, it has become more and more like the status-quo -- the existing "701" Comprehensive Planning Assistance Program of HUD.

It should also be noted that the environmental-quality and public-participation provisions and requirements of the "701" Comprehensive Planning Assistance Program appear to be stronger than we have assurance would be produced by S.268 in its present form. [These regulations are provided as Attachment E.] It would be ironic indeed if this were the way it worked out.

Attachment A

In Sec. 103(a): Insert the following after the word "policy" so as to read: (It is the purpose of this Act)

(a) to establish a national policy to enhance and maintain the quality of life in the Nation by encouraging and supporting the establishment by the several States of effective and open land use planning and decision-making processes to assure informed consideration, in advance, of the environmental implications of major decisions as to use of the Nation's land so as to protect and enhance the quality of the human environment, and . . .

Attachment A

~~appendix a~~

the national environmental policy act of 1969, public law 91-190, january 1, 1970

AN ACT To establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, 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 Environmental Policy Act of 1969".

purpose

SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

title i

declaration of national environmental policy

SEC. 101. (a) [The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.]

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) [The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.]

Attachment B

Public Participation Amendments

1. "Findings" Section -- Insert following sec. 101(g):

( ) The Congress finds that public understanding and effective participation by members of the public is a necessary component of effective land use programs, and that activities to encourage, assist, support and provide for public participation should be an integral component of land use planning and regulatory programs.

2. "Declaration of Policy" Section -- Insert following sec. 102(b)(5):

(The Congress declares that it is the national policy to--)

( ) encourage, provide for, support and assist effective participation by members of the public in all phases of administering this Act, and to assist the States and their political subdivisions to improve and make more meaningful and effective processes for public education and broadly-based public participation in developing, implementing and administering State land use programs, including any aspect of such programs that may be delegated to local governments to implement. Public participation and education in the development, revision, implementation, and enforcement of any plan, program, process, rule, guideline, or regulation established by the Secretary under or pursuant to this Act, or by any State receiving financial assistance pursuant to this Act, shall be provided for, encouraged, supported and assisted by the Secretary and the State.

3. "Purpose" Section -- Insert following "Nation's land resources;" in sec. 103(a):

(It is the purpose of this Act to establish a national policy--)

( ) to encourage and assist the States to develop and provide meaningful and effective opportunities for public participation and education in State land use programs, and to ensure that State land use programs assisted under this Act so provide.

4. "Administration" Section -- Federal Regulations. Insert following section 202(f):

(The Secretary shall--)

( ) develop federal regulations specifying national guidelines for public participation and education in land use processes and programs, established under or pursuant to this Act, and shall develop and implement regulations and guidelines for effective public participation the federal administration of this Act. For the purposes of complying with this subsection, the Secretary shall appoint, and be advised by, a committee made up of representatives of citizen public-interest organizations and of the States, and shall provide full opportunity for participation by the public in developing and revising these regulations and guidelines.

5. "Administration" Section -- Support for Demonstration Projects, etc. Insert following sec. 202(f):

(The Secretary shall) . . .

( ) make grants to, or enter into contracts with, interstate, State, regional or local government agency, non-profit organization or institution, or person or persons, for the purpose of conducting research, demonstration, education or training projects that --

(1) investigate, develop or demonstrate innovative or promising methods or techniques for (a) education of members of the

public and public officials about land-use issues, (b) public participation and education in the land-use planning and regulatory processes, or

(2) investigate, develop or demonstrate methods or techniques for improving the quality of the environment through land-use planning and regulatory processes.

Such projects shall include a public report on knowledge learned during the course of the project together with recommendations. Grants under this section shall not exceed 90 percent of the project cost.

6. "National Advisory Board" Section -- (Insert following section 203(e):

The Board shall have as advisory members seven members of the public, who represent environmental, social and similar public interests. Such advisory members shall be selected by a majority vote of the Board, after full consideration of the views of members of the public, and each shall serve for a two-year period.

7. "State Assistance Program" Title (State Reports) -- (Insert following sec. 301(e)):

( ) Each state report shall include a summary description of opportunities that have been and will be provided for public participation and education in the state land use program, including, but not limited to, budgetary provisions for public education and participation, and provisions in regulations and guidelines for public participation. In addition, in order that the public may be fully aware of the actual extent of public involvement, each state land use planning agency, shall prepare and make available to the public a Summary Report on Public Participation in the state land use program, which shall include, in addition to the information in the state report referred to above, such other information as will explain, clarify, and facilitate public education and participation in the state program, including those aspects of the state land use program delegated to local or county governments to implement.

8. "State Assistance Program" Title -- "State Advisory Council"

(Substitute for first sentence of section 302(b)(7)) [the state land use agency shall--] (7) be advised by an advisory council which shall be composed of a representative number of officials of local or county governments in urban and nonurban areas, and an equal number of repre-

sentatives of the public who shall represent public interests in environmental conservation, social justice, planning and education. The Governor shall appoint a chairman from among the public representatives of the advisory council after a full opportunity for comment by the public, and after due consideration of the opinions of the public. [Then--continue subsection: "The term of service...etc.]

9. "State Land Use Programs" Section

-- At sec. 303(a)(2) substitute for "methods" (of implementation) the terms "effective processes".

-- Substitute the following for the word "and" at the end of sec. 303(a)(2)(F): "and in all land use regulatory processes in the state land use program; and".

10. Others

-- sec. 204(a): strike the words following "public" to and including "programs".

-- sec. 204(b) strike the words following "public" to and including "programs".

-- sec. 302(a)(5): Insert "and public" following "private".

-- sec. 302(a)(6): Insert "and volunteer citizen public-interest environmental resources" following "financial".

-- sec. 302(a)(9): Insert "and citizen public-interest organizations and volunteers" following "personnel".

-- sec. 302(a)(9): Insert following "local agency personnel" the words "including such local agencies as local conservation commissions, environmental advisory boards, and community land use councils,".

-- sec. 302(a)(9): Substitute for the last word of the subsection the following: "programs, and grants via the State to such local agencies

for such programs;".

-- sec. 303(a)(2)(F): Insert following "local governments" the following "and such local agencies as local conservation commissions, environmental advisory boards, and community land use councils,".

-- sec. 302(a)(12): Insert "effective" prior to "conducting", and "public" prior to "comments".

-- sec. 302(a)(13): Insert "effective" prior to "provision".

-- sec. 302(b)(5): Substitute "established effective processes for conducting" for "authority to conduct".

-- sec. 302(b)(6): Substitute "established effective processes for making" for "authority to make".

-- sec. 401(a): Insert "and public" following "private".

-- sec. 401(b): Delete the phrase "except where otherwise provided by law".

ever feasible their natural conditions are maintained.

Policy → II-B-5 STREAM BANKS AND SHORELINES

Shorelines and the lands adjacent to them should only be devoted to development (a) which must be located on or adjacent to a shoreline in order to fulfill the function of the development, and (b) which shall, insofar as feasible and reasonable in light of the intended function of the development, (i) retain the shoreline and waters in their natural condition, (ii) allow continued access to the waters and the recreational opportunities provided by the water, and (iii) retain or provide vegetation which will screen the development from the waters, and (iv) stabilize the land from erosion where necessary, with vegetation cover.

Shoreline is the land where the waters of lakes, ponds, reservoirs, rivers, and streams meet the lands which, if developed, will have an environmental impact upon the shoreline or the body of water. Shorelines shall include the land between the mean high water mark and the mean low water mark of such surface waters.

29

Criteria → *II-B-i Permit Criteria—Watercourses*

A permit shall be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of lands on or adjacent to the banks of a natural watercourse will, whenever feasible, maintain the natural condition of the watercourse and will not endanger the health, safety, or welfare of the public or of adjoining landowners.

II-B-j Permit Criteria—Shorelines

A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision of shorelines or lands adjacent to shorelines: (a) must of necessity be located on or adjacent to a shoreline in order to fulfill the purpose of the development or subdivision; and (b) the development or subdivision will, insofar as possible and reasonable in light of its purpose (i) retain the shoreline and the waters in their natural condition, (ii) allow continued access to the waters and the recreational opportunities provided by the waters, and (iii) retain or provide vegetation which will screen the development or subdivision from the waters, and (iv) stabilize the bank from erosion, as necessary with vegetation cover.

II-C AREAS OF UNIQUE OR HIGH RESOURCE VALUE

30

II-C-1 RECREATIONAL RESOURCES

The use and development of land and waters should occur in such a way as not to significantly diminish the value and availability of outdoor

Attachment D

Definition of State Land Use Program:

Follows Sec. 501(h):

( ) The term "statewide land use program" includes, but is not limited to, a comprehensive statement prepared by the state land use planning agency and adopted by the State in accordance with sections 302, 303, 304 and the other provisions of this Act, setting forth the State's policies and objectives to guide uses of lands, the State's criteria, standards or regulations for applying the policies and objectives to land use planning and regulatory processes and decisions, together with processes for implementation.

* * *

Companion amendment

Add to elements of statewide planning process:

Follows Sec. 302(6):

[an adequate statewide land use planning process shall include --]

( ) the compilation, preparation and development of the State's objectives and policies to guide uses of lands, and of the State's criteria, standards or regulations for applying the policies to land use decisions.

ATTACHMENT E

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, subject to State definition of their extent, ~~shall include~~—

PROVIDED, HOWEVER, THAT THE MINIMUM EXTENT OF SUCH AREAS IN A STATE SHALL BE CONSISTENT WITH FEDERAL GUIDELINES, 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~~ , NATURAL, AND historic areas; and

( ) AQUIFERS, AND AQUIFER-RECHARGE AREAS;

( ) SLOPES IN EXCESS OF 12°;

( ) SUCH ADDITIONAL AREAS AS THE SECRETARY 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 of 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.

Attachment F

FEDERAL REGISTER, VOL. 37, NO. 64—SATURDAY, APRIL 1, 1972

Title 24—HOUSING AND URBAN DEVELOPMENT

Chapter VI—Office of Assistant Secretary for Community Planning and Management, Department of Housing and Urban Development

[Docket No. R-72-164]

PART 600—COMPREHENSIVE PLANNING ASSISTANCE

Part 600 of Title 24 of the Code of Federal Regulations was published in effective form in the FEDERAL REGISTER on February 4, 1972 (37 F.R. 2665), to provide requirements and guidelines for filing a Comprehensive Planning Assistance grant application. Opportunity was provided for interested persons to submit written comments or suggestions with respect to the regulations. Comments and suggestions received are currently under consideration. In the meantime, there are certain changes the Department desires to make. The substantive changes are as follows:

Section 600.40(b) is new. It reflects departmental policy to assist only one areawide planning agency in each metropolitan and nonmetropolitan planning jurisdiction. Items formerly numbered (b) and (c) are renumbered (c) and (d).

Part of § 600.90(f) and the entire § 600.90(g) of the February 4, 1972, publication are deleted since they deal with matters outside the scope of the regulation.

Minor corrections are made in §§ 600.65, 600.95, 600.100, 600.105, 600.128, and 600.170.

For the reasons stated at the time Part 600 was first published comment and public procedure on this amendment would be impracticable and contrary to the public interest and good cause exists for making the amendment effective upon publication.

Accordingly, Part 600 is amended to read as follows:

Subpart A—General Information

Sec.
600.1 Purpose.
600.5 Scope of comprehensive planning.
600.10 Financial support.
600.15 Staff and consultant services.
600.20 Inservice training.
600.25 Who may be assisted.
600.30 Legal status and authority.
600.35 Assistance to States for statewide planning.
600.36 Assistance to States for assistance and services to localities.
600.37 Provision of planning assistance to localities by areawide planning organizations.
600.40 Grants for areawide planning and management assistance.
600.45 Assistance to large cities.
600.50 Planning and management assistance for other applicants.
600.55 Eligible activities all assisted agencies.
600.58 Ineligible activities.

Subpart B—Special Requirements

600.60 Purpose.
600.65 Environmental considerations.
600.70 Required housing element.
600.75 Equal opportunity requirements.
600.80 Citizen involvement.

§ 600.65 Environmental considerations.

HUD requires that planning activities funded under the Comprehensive Planning Assistance Program be conducted in full accord with the policies and provisions of the National Environmental Policy Act of 1969 (Public Law 91-190).

(a) *Environmental goals.* The environmental goals of the Comprehensive Planning Assistance Program are to:

(1) Improve and conserve the quality of the air, water and earth resources for the benefit of present and future generations in the planning and shaping of man-made environments;

(2) Assure that environmental concern and awareness becomes an integral part of the comprehensive planning process, since comprehensive planning is a major means for accomplishing community development on a sound environmental basis; and

(3) Achieve those goals set forth in the National Environmental Policy Act of 1969 (section 101), some of which are:

(i) "* * * assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings;

(ii) "* * * Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iii) "* * * Achieve a balance between population and resource use which permit high standards of living and a wide sharing of life's amenities."

(b) *Inclusion of environmental planning in the comprehensive planning process.* Each applicant in the developmental planning aspects of its assisted comprehensive planning work should:

(1) Identify salient elements of the natural and the man-made environments, their interrelationships, and major problems and/or opportunities they present for community development;

(2) Assess those environmental factors which will:

(i) Minimize or prevent undue damage, unwise use, or unwarranted preempting of natural resources and opportunities;

(ii) Recognize and make prudent allowance for major latent environmental dangers or risks (e.g. floods, mud slides, earthquakes, air and water pollution); and

(iii) Foster the human benefits obtainable from use of the natural environment by wise use of the opportunities available (e.g. use of natural drainage systems for park and recreational areas); and

(3) Seek, under the above policies and goals, to:

(i) Avoid adverse environmental impacts on neighborhood or community areas through the planning and careful location and development of community facilities;

(ii) Provide environmental amenities to all areas being planned for, and access to such amenities; and

(iii) Equalize the impact and burden of community change and development on living areas, rather than concentrate them in areas where "sites are cheap"; and

(4) Incorporate State environmental policies and standards, particularly those developed in response to Federal law regarding protection on air and water quality and control and abatement of noise.

(c) *Environmental assessment.* Each applicant shall prepare an environmental assessment when the assisted work program will result in developmental plans or policies for land use, major community facilities, major utility systems, major transportation systems or the protection of natural areas (estuaries, coastal zones, etc.). The assessment, which shall not be written as a justification for any proposed project, program, task or policy, must:

(1) Include the following:

(i) A summary or abstract of the proposed plan(s) or policies;

(ii) The environmental impact (beneficial as well as adverse) of the proposed plan(s) or policies, if they are carried out;

(iii) Any adverse environmental effects which cannot be avoided should the proposed plan(s) or policies be implemented;

(iv) Alternatives to the proposed plan(s) or policies and an analysis of those alternatives;

(v) The relationship, under the proposed plan(s) or policies, between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(vi) Any irreversible and irretrievable commitments of resources which would be involved if the proposed plan(s) or policies should be implemented; and

(vii) A statement setting forth applicable Federal, State and local environmental controls;

(2) Be appended to the resulting proposed plan and accompany the plan through all deliberatons leading to approval and subsequent amendment; and

(3) Be available to the public on a timely basis, including availability before public hearings regarding the plan.

§ 600.80 Citizen involvement.

(a) HUD requires citizen involvement in programs assisted under the Comprehensive Planning Assistance Program: Specific techniques for securing citizen involvement are not imposed, but all applicants are responsible for:

(1) Ensuring that comprehensive planning is responsive to the needs of citizens within the planning jurisdiction;

(2) Reporting on the various means employed to ensure that assisted activities are responsive to the citizens; and

(3) Selecting means of obtaining citizen involvement that can be evaluated according to the following performance criteria in paragraph (b) of this section.

(4) Including a Statement of Citizen Involvement in each Progress Report called for by HUD. Such statement shall identify specific activities undertaken to meet the criteria in paragraph (b) of this section and shall show the relation between the activities and the basic objectives of the applicant's Overall Program Design.

(b) The following criteria will be used to measure the citizen involvement required by paragraph (a) of this section:

(1) *Extent of interaction and involvement.* Meaningful and effective communication works both ways: Citizens, in addition to being informed, should be able to respond. They should have the opportunity to help initiate and implement plans, as well as react to proposals. Communication and interaction between citizens and the grantee should be continuous.

(2) *Access to the decision making process.* The grantee should provide citizens with clear and direct access to the decision making process. Citizens should be involved when goals, objectives, priorities, and policies are formulated. They should help develop methods of communication that are effective in reaching people. Meeting places and times should be widely publicized on a regular basis.

(3) *Improving communication techniques.* Effective communication produces information that is readily available, timely, and easily understood by citizens. All grantee's information pertaining to the activity (except when the disclosure of such information would be a breach of public trust) should be available to citizens upon request. Information should be provided on a continuous basis and sufficiently in advance of public decisions to permit a thorough citizen review of the proposals and an opportunity to react. Grantees should relate technical data and other professional material to the average neighborhood resident so that he understands the impact of public programs, available options, and alternative decisions. When the lack of technical resources is a barrier to effective citizen involvement, the planning agency should provide citizens with technical assistance to enable them to make knowledgeable decisions.

Senator JACKSON. I agree with you. Maybe we ought to talk about incentives instead of sanctions. But there are certain scare words, code words, and certain propaganda which employs them that has been applied to this bill. I know when we were on the floor debating it, I had Senators coming around to me saying I understand the Federal Government is going to tell us where we can park our car and all of these things, which is ridiculous.

As I said this morning, it is simply an effort to provide an incentive to the States to do what they should have done a long time ago and that is to start planning and thinking beyond the confines of the city lots or the county limits, as the case may be.

We need help, so we appreciate your support in trying to bring about a bill that will be fair to all sides of the controversy: development on the one hand and conservation on the other.

We just need a decent, respectable, and equitable adjudicatory process where we can get decisions; and we can't get them today. That is what we are trying to do here.

Might I just say, too, Mr. Chairman, that Lloyd Tupling, who represented the Sierra Club so ably for many years, will be retiring and this may be his last public appearance before this committee. We look forward, of course, to seeing him on the Hill, but I believe I am correct in saying this may be his last public appearance.

Mr. TUPLING. I plan to be here next week.

Senator JACKSON. Next week. Well, I wanted to cover it now. I just want to commend him for the very effective job that he has done. Lloyd Tupling has integrity, he is respected, and he is the kind of person that, if we do disagree, he is never disagreeable about it.

I think you have done a fine, fine job, which you did when you were on the Senate staff as well as in your present assignment.

I just wanted to take this opportunity to express my appreciation and, I know, on behalf of all of the members of the committee.

Mr. TUPLING. Thank you very much.

Senator HASKELL (presiding). Mr. Tupling, I believe you have one further witness.

Mr. TUPLING. Yes; Charles Callison of the National Audubon Society.

STATEMENT OF CHARLES H. CALLISON, NATIONAL AUDUBON SOCIETY

Mr. CALLISON. Mr. Chairman, I am Charles Callison and I represent one of the larger and more experienced of the national conservation organizations, the National Audubon Society, which has 280 local chapters and 232,000 members throughout the United States.

I would like to say, Mr. Chairman, it is an honor always to appear before this distinguished committee which has processed and sponsored so much important environmental legislation through the years. It is also a particular personal pleasure of mine to appear on this panel with my friends and colleagues in the environment movement.

Mr. Chairman, one of the major conservation priorities of the National Audubon Society, and I quote from a policy statement adopted in January of this year by our board of directors, is scheduled to appear in the March issue of Audubon magazine, which is to work for

a coherent national land use policy and land use planning at State and regional levels.

Accordingly, the society warmly endorses the purposes of S. 268. We, too, believe the bill should contain effective sanctions. It will be necessary, we believe, not only to offer the carrot, but to show a stick to induce all States to move in concert and we thing it very, very important that all the States do move in concert in land use planning and in land use programs. Otherwise the gold rush of the developers and the despoilers into those States or those regions that are dilatory in developing land use programs might be something frightening to behold.

S. 268 contains a generally good definition of areas of critical environmental concern in title V, pages 46 and 47, but one additional descriptive clause must be added to those enumerated. That is in numbers 1 to 9 on page 47. Please add to this enumeration the following: "Irreplaceable habitats of rare and endangered species or of other wildlife resources of significant recreational, esthetic or scientific value."

Having defined areas of critical environmental concern, the bill pays inadequate attention to them elsewhere in its provisions. The phrase doesn't appear once in section 101. Findings, is mentioned once, and ambiguously in connection with management efforts, key facilities, and development in section 102, declaration of policy; in section 302 (A) (8) on page 19; and again in a conflicting or inconsistent context in three key places, section 303(A) (2), (A), in lines 7 through 10 on page 23; in section 303(d) page 25; and in section 304(a) pages 26 and 27.

The apparent inconsistency is that section 304, in spelling out conditions for the continued eligibility of a State to receive grants requires that the State shall not have excluded any substantial areas of critical environmental concern which are of major national significance.

Must an area of wetlands, an estuary, or a rare ecosystem be judged of major national significance to qualify for preservation? The ambiguity was intentional, I am sure, but it should be clarified.

We further recommend, for the purpose of consistency, the insertion of the following language after the second semicolon in section 302(a) (3) on page 18: "preservation and protection of areas of critical environmental concern."

Such land use planning as has been done in the United States has, in the main, been fragmented, biased, violated, or ignored by local politicians who have their own special axes to grind or who yield to local economic and development pressures.

That planning and enforcement authority can be made to work in the broader public interest when done on a regional basis is being demonstrated now by the Adirondack Park Agency, a creation of the New York Legislature, and by the San Francisco Bay Conservation and Development Commission, a creation of the California Legislature.

Other examples could be cited, but they are few and far between.

The compelling purpose of S. 268 is to bring about similar regional and State-wise planning throughout the Nation.

We urge the committee to perfect S. 268 and take it to the floor for passage.

[The full statement of Mr. Callison follows:]

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STATEMENT OF CHARLES H. CALLISON, EXECUTIVE VICE PRESIDENT
NATIONAL AUDUBON SOCIETY

One of the major conservation priorities of the National Audubon Society (as formulated after consultation with Audubon chapter leaders and approved by the Society's Board of Directors in a statement to be published in AUDUBON magazine for March 1973) is stated as follows:

"Work for a coherent national land-use policy and for land-use planning at state and regional levels."

Within the goal of achieving coherent land-use policy and intelligent planning it is the further purpose of the Society to:

(a) "Press for preservation of eco-essential wetland, estuarine and shoreline resources;

(b) "Work for preservation of open space and greenbelt preserves in and near urban areas; and

(c) "Advocate flood plain zoning and management to replace costly and unsound flood control projects."

Accordingly the National Audubon Society warmly endorses the purposes of S.268. We supported similar legislation which passed the Senate last year, although in weaker form than we preferred, only to be lost through inaction in the House of Representatives.

It is essential that land-use planning be undertaken and progress expeditiously in all states in accordance with federal

guidelines, and in coordination with federal policies and projects "having land use implications", as stated in Section 103(e) and (f) of this bill. We doubt that the availability of federal grants and technical assistance as offered in Title III will be sufficient to induce all states to move in concert. It will be necessary, we believe, not only to offer the carrot but to show a stick. We strongly recommend the imposition of sanctions along the lines of those proposed in S.632 as reported by this Committee in the 92nd Congress, and before they were deleted by amendment on the floor of the Senate.

S.268 contains a generally good definition of "areas of critical environmental concern" in Title V, pages 46-47, but one additional descriptive clause must be added to those enumerated from (1) to (9) on page 47. Please add to this enumeration, we urge, the following:

"Irreplaceable habitats of rare and endangered species or of other wildlife resources of significant recreational, esthetic or scientific value."

Having defined "areas of critical environmental concern", the bill pays inadequate attention to them elsewhere in its provisions. The phrase doesn't appear once in Section 101, "Findings"; is mentioned once, and ambiguously in connection with "management efforts", "key facilities" and "development" in Section 102, "Declaration of Policy"; in Section 302(a)(8) on page 19; and again in a conflicting or inconsistent context in three key places, Section 303(a)(2)(A), in lines 7 through 10 on page 23; in Section 303(d),

page 25; and in Section 304(a), pages 26-27. The apparent inconsistency is tnat Section 304, in spelling out conditions for the continued eligibility of a State to receive grants requires that the State shall not have excluded "any substantial areas of critical environmental concern which are of major national significance..."

Must an area of wetlands, an estuary, or a rare ecosystem be judged of "major national significance" to qualify for preservation? The ambiguity was unintentional, I am sure, but it should be clarified.

We further recommend, for the purpose of consistency, the insertion of the following language after the second semicolon in Section 302(a)(3) on page 18: "preservation and protection of areas of critical environmental concern";

[Such land use planning as has been done in the United States has, in the main, been fragmented, biased, violated, or ignored by local politicians who have their own special axes to grind or who yield to local economic and development pressures.] That planning and enforcement authority can be made to work in the broader public interest when done on a regional basis is being demonstrated now by the Adirondack park Agency, a creation of the New York Legislature, and by the San Francisco Bay Conservation and Development Commission, a creation of the California Legislature. Other examples could be cited, but they are few and far between. The compelling purpose of S.268 is to bring about similar regional and state-wide planning throughout the nation.

We urge the Committee to perfect S.268 and take it to the floor for passage.

Senator HASKELL. Thank you, Mr. Callison.

Gentlemen, I think this is probably a fair statement: I think nobody on this committee wants the Federal Government getting into the business of saying where the gas station is located or into the business of zoning in any particular way. But in sifting through these hearings, I detect a difference in viewpoint which I will try to articulate.

The first view is that there should not be a substantive review by the Federal Government. The theory being that by going through the procedures, an adequate land use program will be arrived at by the States and who is the Federal Government to judge its adequacy or inadequacy.

The other viewpoint is that there should be general language—not specific provisions, because specific provisions are a little difficult to apply to 50 separate States—but there should be a general statement of purpose which, if a program was developed by a State that was obviously very bad, the State could be asked to re-do it.

I mentioned to you, Mr. Penfold, I raised the question with one of the witnesses, I said, in our State of Colorado, suppose the State came up with a program that decided we ought to have solid development from Fort Collins down to Pueblo, what then, and the witness said, well, I think that is Colorado's prerogative to do that.

These are countervailing viewpoints, I take it, gentlemen. You all expressed it slightly differently, and please disagree with me. I take it you gentlemen feel there should be at least a statement of national purpose which, if something was outrageously bad, would permit the Federal Government to ask the State to go back to the drawing board.

Would I be expressing the general viewpoint correctly?

Mr. CALLISON. Yes. I would concur with that, Mr. Chairman.

Mr. TUPLING. I think that would be correct.

Senator HASKELL. Would that be the consensus of your group?

Mr. TUPLING. Yes, I think Mr. Duddleson would like to address himself to that.

Mr. DUDDLESON. Some of us have been talking about this bill lately since we received the committee's invitation to appear here today.

Some of us started out with the thought that it would be possible to become very explicit on a wide range of environmental goals in legislation of this kind. I think it is fair to say some of us have changed our minds on that.

I think we agree that the bill needs an environmental quality thrust in broad substantive policy language—perhaps of the order of the National Environmental Policy Act.

Further, it needs explicit provision for issuance of national substantive guidelines or criteria by the administrator of the program within the framework of the broad national policy.

There are regions of the country that are different from other regions of the country and those differences must be recognized.

Senator HASKELL. Thank you, Mr. Duddleson.

Mr. DUDDLESON. In looking at some of the better of the new breed of the State land use regulatory laws and programs, from California's San Francisco Bay Conservation and Development Commission that has been mentioned, to the 1972 Florida Act, to the 1971 Vermont Act, for example, the gist of their contribution and their genius in a sense seems to be that they deal not so much with maps, as local zoning programs typically do, but they deal essentially with statements

of policy and then with criteria for applying the policy to land use decisions.

Senator HASKELL. I think that is an excellent statement, Mr. Duddleson, and I believe that probably represents the consensus of you gentlemen.

Would you please correct me, because I don't want the record to stand wrong.

Well, that really is the only comment that I have.

Senator Fannin.

Senator FANNIN. Thank you, Mr. Chairman. I am sorry I was not here to hear all of the testimony. I will defer to Senator Buckley. Maybe he has some questions.

Senator HASKELL. Senator Buckley.

Senator BUCKLEY. Thank you, Mr. Chairman. I wish I could have appeared earlier and heard all of the statements of these gentlemen. I came in during Mr. Callison's statement and I am afraid I would have to do my homework in order to ask many specific questions. But I would like to address something at the beginning of Mr. Callison's statement, namely, the objectives of the Audubon Society.

The preservation of eco-estuary and shoreline resources. Elsewhere you emphasize the need to protect areas of critical environmental concern. I think one problem we have with the legislation under consideration is that it covers several interests.

One of them, of course, is the presentation of ecosystems which not only have importance outside of State boundaries, but which society has come to understand and respect the need to preserve as irreplaceable assets and the need to preserve special protection.

I suspect it could not be left necessarily to the conclusion of the State organization.

On the other hand, within the bill we have some areas of concern which are outlined which many of us feel are legitimately the concern of the State and not of the Federal Government.

What I would like to ask, in effect, is whether or not the various organizations whom you represent see any merit in trying to in effect splice out of this legislation those areas such as the wetlands which clearly have national implications?

Mr. CALLISON. Thank you, Senator Buckley. If I may respond to that. We are pleased that the definition of critical environmental concern covers coastal wetlands, marshes, and other land inundated by the tides, beaches, and dunes, shorelands and flood plains of rivers, lakes, and streams, and others.

Now, that is certainly in line with a historic major concern of the Audubon Society throughout the country. This is one of our long-time major environmental goals, to protect areas of this kind. We are pleased with this emphasis. We want it not to be lost and we want to be certain that such areas are not only judged of national significance, such as a major beach or estuary, such as the Delaware or Chesapeake Bay, but those that are of critical importance locally to the environment and the ecosystems locally, that they be protected.

So that was the reason why I raised the question of what some might interpret as an inconsistency. I raised the question because I think that should be examined.

In one place in this bill there is a requirement for further qualifica-

tion for Federal aid under this act, in marking out of such areas for preservation and I was afraid these might be the only ones that receive such emphasis.

Senator BUCKLEY. To clarify your concern, if I could restate it for my own satisfaction, you would be interested in seeing that those areas of particular environmental importance, whether or not there is a spillover across the State line, whether or not it is located in exactly one State, should be protected and that the Federal Government insist these areas be protected irrespective of whether or not a State in revising its own plan agreed that this protection was necessary.

Mr. CALLISON. Thank you, Senator Buckley. You said it much better than I did.

Senator BUCKLEY. Not at all.

Mr. TUPLING. I would just like to make one additional comment because the question has been raised in regard to the Coastal Zone Management Act in relation to this bill.

I know many of us are hopeful that deliberations on this bill will not slow implementation of that program although that appears to be what is happening.

I know last year Congress in its wisdom decided because of the fragile nature of the coastal zone and its ecosystem that a bill should be passed. Because it will be many years before we realize the fruits from a national land policy bill, the Sierra Club does feel that the coastal zone management program should go ahead.

Thank you.

Senator BUCKLEY. That is the consensus of the experts.

I appreciate that input because I have a feeling that this bill not going to have the kind of time spent that will meet the urgency of the coastal zone problem and other problems. I think by mixing apples and oranges in this legislation we create problems which have to be handled in different ways.

I am obliged to you all for your appearance here.

Senator HASKELL. Thank you very much, Mr. Tupling and gentlemen. You have been very helpful and we all appreciate it.

I am advised that Mr. Brewer has to catch an airplane and therefore I am going to go out of order and ask him to testify now. If Mr. Brewer will step forward and perhaps summarize his written statement.

STATEMENT OF GENE C. BREWER, PRESIDENT OF SOUTHWEST FOREST INDUSTRIES, INC., AND CHAIRMAN OF THE NATIONAL ASSOCIATION OF MANUFACTURERS' NATURAL RESOURCES MANAGEMENT AND CONSERVATION COMMITTEE, ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

I am Gene C. Brewer, vice chairman of Southwest Forest Industries, Inc., Phoenix, Ariz., and I serve as chairman of the natural resources management and conservation committee of the National Association of Manufacturers. My testimony is presented on behalf of the association, a spokesman for American manufacturers.

With me are Donald E. Schwinn, associate general counsel, Kennecott Copper Corp., and Daniel W. Cannon, NAM's director of environmental affairs.

We wish to applaud the chairman, Senator Jackson, and the distinguished committee for the diligence which they have exercised in connection with this legislation, which has gone through a constructive evolution over a course of many months.

First, let me make clear that the National Association of Manufacturers supports the establishment of a national land use policy. The association's official policy position on this subject recognizes the impact of growth in the national economy on the environment and the conflicting demands of urban and rural development, commerce, industry, agriculture and recreation on our use of land resources. We believe that an era of militant, winner-take-all positions should end, and that an era of intelligent compromise, accommodation and balancing of conflicting interests should begin so that the needs of all segments of society can be adequately met. Haphazard, ad hoc land use decisions, all too often made in an emotional, crisis-oriented atmosphere cannot in the long run best serve the objective of a high standard of living, both in terms of esthetics and recreational opportunities and in terms of material goods.

Therefore, the association supports the establishment of a national land use policy to which State and local planning and civic groups can refer for guidance and assistance in dealing with land use problems. We believe that such a national land use policy should clearly guide these State and local groups toward the intelligent compromise, accommodation and balancing of conflicting interests which our society needs.

Subsection 102(b)(2) states that it is the national policy to 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. We believe this subsection could be improved by spelling out that it is the national policy to assist State governments to develop and implement land use programs for non-Federal lands which will achieve an intelligent compromise, accommodation and balancing of conflicting land use interests, including both the interest of preserving the environment and the interest of encouraging beneficial economic development. The concept of multiple use should be applied wherever possible, so that our resources are utilized by the public in the balanced combination that best meets the needs of the American people now and in future generations.

This should be carried forward into section 302 which sets forth elements to be included in an adequate statewide land use planning process. We believe that this section should contain a subsection calling for a method of insuring that this national land use policy is taken into consideration in the statewide land use planning process.

Further, this should be carried forward to sections 303 and 304, which set forth the elements to be included in a State land-use program. This would seem to be accomplished by subsection 303(a)(1), which calls for inclusion in the State land use program of an adequate statewide land use planning process as provided for in section 302 of the act. However, we do note that subsection 303(a)(2), which lists methods of implementation, does not list a method for assuring that development and land use of regional benefit is allowed to take place.

Further, we note that the only apparent substantive review of State land use programs is referred to in subsection 304(a), which calls for the Secretary of the Interior to determine whether or not the State has excluded any substantial areas of critical environmental concern which are of major national significance. There is no provision for the Secretary to determine whether or not the State has failed to consider development and land use of regional benefit or even of national benefit. This tends to give an unbalanced impression of the national policy and purpose of this legislation.

Naturally, we are concerned with the potential impact which this legislation may have on the location of industrial production facilities, transportation and storage facilities, on the availability of energy supplies to operate such facilities, and on natural resources exploration and development. Our concern in regard to energy supplies has grown especially keen within the past 2 years, which have been characterized by an increasing number of manufacturing plant shutdowns and slowdowns due to energy shortages.

We are pleased to note that subsection 101(d) under the heading of "Findings" 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, 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.

However, the fact that this is stated as a finding rather than under the heading of "Declaration of Policy" points up once again the necessity of making the national land use policy unmistakably clear. We note that the declaration of policy does make reference to economic factors and economic values and to encouraging beneficial economic development, and that subsection 103(a) refers to economically sound uses in the course of describing the purpose of the act. We also note that subsection 302(a)(3) indicates that the statewide planning process shall include projections of the nature and quantity of land needed and suitable for agriculture, mineral development, and forestry; industry and commerce, including the development, generation, and transmission of energy; transportation; and 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.

However, we believe that the declaration of policy could be improved by making it crystal clear that it is national land use policy to encourage the development of adequate domestic energy sources and adequate domestic mining and manufacturing facilities subject to appropriate regulation to minimize or avoid adverse effects on the environment. The policy should also recognize that, because of the hidden nature of mineral deposits, as much land as possible should remain open to exploration for minerals.

Another feature of the bill which may lead to imbalance in land use planning is the concept of areas of critical environmental concern. We note there is no analogous concept of areas of critical industrial concern. The absolute necessity for American industry to have available large quantities of water is sometimes overlooked. The definition

of areas of critical environmental concern contained in subsection 501(e) could encompass every suitable industrial site within a State. Further, the definition is left completely open ended by item (9): "and such additional areas as the State determines to be of critical environmental concern."

The looseness of the definition is compounded by subsection 303(d), which provides that "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 use is inconsistent with the requirements of the State land use program as they pertain to areas of critical environmental concern. . . ."

We are concerned that there will be a strong tendency to designate vast areas as "areas of critical environmental concern" and to severely limit the land uses which may take place within such areas. At the very least, the definition should be tightened up, and a provision added, perhaps to section 302, along the line of subsection 306(c)(8) of the Coastal Zone Management Act, which provides that, prior to making grants to a coastal State, the Secretary shall find that "The management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature."

From the industrial standpoint, another difficulty with land use legislation arises from the fact that mineral resources can only be extracted from the land where they exist. As more sophisticated means of detecting mineral deposits are developed, various areas of land not formerly so considered are now being classified as having high mineral potential. We may seriously weaken this country in its economic development if we adopt a very rigid classification of lands. Much attention has been focused on our growing dependence on foreign sources for energy supplies; public awareness of our growing dependence on foreign sources for mineral supplies has not even begun. In order to maintain a desirable flexibility under the legislation being considered, we respectfully urge the committee to add the following subsections to the bill with subsequent subsections redesignated:

Subsection 302(a)(5):

The continuing reevaluation of the land use classification of each parcel of land classified as nonmineral land in the statewide inventory of land and natural resources of the State, and establishing of procedures which shall require reclassification from nonmineral lands to mineral lands of any parcel of land included in such statewide inventory when circumstances so indicate;

Subsection 303(a)(2)(E):

Assuring that lands classified as nonmineral lands be reclassified as mineral lands when the circumstances so indicate and that such lands be made available for mineral development;

Subsection 303(e):

Any method of implementation employed by the State shall include the authority under the State police power to require that lands included in the statewide inventory of land and natural resources of the State as nonmineral be reclassified as mineral lands when the circumstances so indicate and that the use of such lands for mineral development purposes be authorized.

We believe the Senate acted wisely in deleting the sanctions from this legislation during the previous Congress. We believe the use of

sanctions could harm the cause of good intergovernmental relations. The concept of using other programs as a stick to coerce performance by the States is questionable.

We also believe the Senate acted wisely in trimming the authorization down from $800 million over 8 years to $170 million over 5 years. This is a new, experimental program, and we believe that the Congress should make a substantive review of its results at the earliest practicable opportunity. We suggest it might be desirable to limit the authorization to 3 years so that such a substantive review could take place after 2 years of experience.

In conclusion, we reiterate that we support the establishment of a national land use policy; that it should favor a balanced approach in unmistakably clear terms; that it should recognize the need for land for mineral resource development, energy resource development, and for manufacturing purposes; that it should not employ sanctions against the States; and that it should be substantively reviewed by the Congress at the earliest practicable occasion.

We appreciate this opportunity to present our views on this very important legislation.

Senator FANNIN. Thank you, Mr. Brewer.

We do have a vote and we will have to recess. Do your associates have any statements they want to make at this time?

Mr. BREWER. I don't think so, no.

Senator FANNIN. Thank you very much. We must apologize for having to recess, we do appreciate your appearance.

[The material submitted by Mr. Brewer follows:]

Recommendation of Natural Resources Management and Conservation Committee On

NATIONAL ENERGY POLICY

Adopted by the NAM Board of Directors, December 6, 1972

I. Preamble

No single factor has been more central to the development of the United States as a world power and to the living standards and aspirations of its citizens than a reliable, adequate, and generally available supply of energy in multiple forms and at low prices. All projections of continuing increases in our national output and the affluence of our citizens have assumed continued abundance of such energy supply.

Fundamental to the purpose of all national policies, including energy, is the paramount objective of insuring the national security of the United States. This objective requires development of such domestic or secure-source energy supply capabilities as to negate undue foreign influence on U. S. foreign and domestic policies, international trade balances, and internal economic decisions.

Today there exists ample evidence that we can no longer take unlimited energy for granted. Rather, as a nation, we are now in a position of inadequate domestic supply. The future outlook for energy in the U. S. is characterized not only by increased demand, but by increasing foreign dependence, environmental conflicts, increasing costs and uncertainty.

Government and industry have a responsibility to inform the general public as to the economic and national security factors involved in adequate energy supplies and the need to develop new sources of supply, new techniques and facilities.

Fortunately, the United States has a potentially large energy resource base together with a well-developed industry. The necessary first step in attacking the energy shortage problem is the wedding of this proved combination to positive, constructive and coordinated government policies that give needed priority to the goal of national energy self-sufficiency.

The ad hoc, diffuse, and often conflicting approaches to individual energy issues that have marked the past can no longer be tolerated. There needs to be full recognition that all energy-related matters must be analyzed as parts of a total and unified subject which has as its foundation well defined energy policy direction, and which recognizes the interplay of economic, reliability, and environmental concerns.

The federal government should establish rational and consistent national policies which will create a long-range economic climate in which producers and consumers can make confident forecasts on which to base long-range plans in an orderly manner. If government does this, then the normal workings of economic supply and demand will have a chance to function so that a crisis from imbalance will not result.

Government policies should encourage research by private industry in commercially-oriented matters. Government sponsored basic research, where private incentive is lacking, is appropriate. Emphasis should be placed on research and development efforts aimed at increased utilization of existing energy supplies. The nuclear breeder reactor and synthetic gas and liquids from coal are examples. Government and industry should also be concerned with the longer term energy picture with efforts aimed at harnessing solar energy and nuclear fusion.

The necessity for long lead times for the planning and construction of

energy development projects, and the costliness of delays, is insufficiently understood by the general public. As a result, industry is encountering great difficulties in meeting the projected energy needs for the nation. It is imperative that governmental decision-making processes be speeded up and simplified. Environmental factors should be taken into consideration in the decision-making process but they should be reasonably balanced with the growing energy needs of the nation.

II. Fuel and Energy Resources

A. Capital Requirements

All projections of increased demands for energy are coupled with a matching demand for capital investment by energy industries. These funds can be generated from but three sources -- income, capital recovery, and external financing. Any impairment of either of the first two results in weakening the industry's ability to finance by either borrowing or equity offerings.

Critical to prospects of energy supply improvement will be public and governmental appreciation of this relationship and particularly the negative effects of unrealistic price controls and a system of taxation, for example, that sets mineral depletion rates below adequate levels.

B. Oil and Gas

The government has consistently held the wellhead price of gas at an unrealistic level. In so doing, it has severely restricted the petroleum industry's ability to generate the capital funds required to finance a continuing search for oil and gas on the scale necessary to maximize the nation's output, and has badly damaged incentives to reinvest available funds. Further,

this policy made gas available at prices much below the levels at which other forms of energy could compete, and gas thus excluded or displaced oil and coal from many energy markets. The impact has been a major factor in contributing to current shortages.

Wellhead natural gas prices should be permitted to reach levels so natural gas and natural gas by-products can compete freely in the marketplace on the basis of their useable energy content, consumer preference, and other values. This would protect the public interest in securing future supplies of energy at realistic cost.

National policies should facilitate the development of as yet untapped sources of oil and gas. For example, petroleum from the Arctic areas of Alaska should be made accessible to the lower 48 states as should petroleum from all the Outer Continental Shelf. National policies should encourage technological progress in such matters as nuclear stimulation of reservoirs, coal gasification and liquefaction, and oil shale development. Additional supplemental sources of gas should be made available from reforming of liquid hydrocarbons and liquefied natural gas from overseas sources.

Leasing of federal offshore acreage for oil and gas operations should be accelerated in frequency and expanded in size. The Outer Continental Shelf Lands Act, which extablished a procedure for granting and administering oil, gas and sulphur leases on the Shelf, has been generally satisfactory and should be continued substantially in its present form as to such minerals.

The regulatory program for fuel imports should be administered to: (1) encourage the development of all domestic energy supplies and (2) discourage the diversion of fuel refining and manufacturing capacity to foreign countries. National security requires the development of contingency plans to cope with possible foreign supply interruptions.

C. Coal

About one-half of all electricity generated in the United States is produced by burning coal. Coal is our most plentiful fossil fuel and it is essential that suitable means be developed to assure that this vital fuel resource can continue to be utilized for electric power generation. It is expected that coal must continue to be a major source of basic fuel for electric utilities throughout the remainder of this century.

Currently, fifty per cent of our nation's total coal supply is surface-mined. The federal government should do all within its power to prevent passage of laws and regulations that would hinder surface mining of coal, which is essential to an adequate supply of energy, and should encourage effective reclaiming and restoring of surface-mined lands so as to promote use of these techniques by the mining industry under state regulation.

Other existing and potential restrictions on maximum coal utilization arise out of extreme limitations on sulphur content and sulphur oxide emissions. The ultimate solution, so as to allow continued use of our vast coal reserves, appears to be removal of objectionable oxides from the fuel before burning or from stack gases immediately after burning. While research is underway to do this, a greatly expanded effort is needed. Meanwhile, it is essential that continued use of coal be allowed so long as reasonable standards for ground level concentrations of sulphur oxides are not exceeded.

D. Nuclear Energy

To insure maximum contribution to the general welfare, to improve standards of living and to protect the environment, national energy policies

should now be directed toward the development and utilization of nuclear energy in the most vigorous manner possible.

Government-industry teamwork has brought about outstanding success in the nuclear energy field. With the ever-increasing number of reactors now under construction or planned by the electric utility industry, increased emphasis in government sponsored programs should be on advanced reactors offering environmental resource advantages and on development and demonstration of fast breeder reactors and research on other new types of reactors as well as on nuclear fusion.

[The near-term uranium supply market has been adversely affected because of delays in the completion of nuclear power plants.] However, adequate low-cost uranium reserves must be developed within the United States so that these domestic resources will meet the demand until breeder reactors are operating commercially. The regulatory and economic climate should be set to encourage the uranium mining and milling industry to meet our mounting needs which will continue to grow far into the future. The capacity of uranium enrichment facilities will have to be greatly increased, and steps should be taken toward private ownership of existing or new facilities.

Effective siting and licensing procedures for nuclear power plants that will minimize delays should be developed. There is a need to define and disseminate information as to the actual extent of risk from potential radiation and warm water discharge in order to eliminate objections based on emotion rather than fact.

E. Oil Shale

[Oil shale deposits are an important resource for the future fuel and energy requirements of our economy. Over future years, this resource

should be developed to supplement production of conventional crude oil.

Government and private industry should intensify research and development activities necessary to improve oil shale extraction technology, to reduce costs and to resolve environmental problems associated with effective utilization of this resource.

Since the federal government controls the great majority of oil shale lands, national policies should be patterned after those which contributed to our economic growth through private development of natural resources on federally owned lands. In particular, oil shale lands should be made available for leasing under the Mineral Leasing Act, modified as necessary to reflect the unique character of oil shale. In particular, the acreage limitation which restricts any one company to one lease with a maximum of 5,120 acres should be enlarged. Leasing regulations should encourage the commitment by private enterprise of its technical and capital resources. Specifically, royalties should be reasonable in amount and structured so as to encourage efficient operations.

III. Electric Energy

Electricity is a secondary form of energy, generated through the conversion of fuels and other primary energy sources, such as falling water. In the absence of a presently unforeseen major technological breakthrough, vastly increased quantities of all basic fuels - coal, oil, gas and uranium - will be required to generate electrical energy in this country. The proportion of each basic fuel will depend upon many factors, such as environmental requirements, technological developments, costs, and a variety of competitive considerations. Pumped storage projects as a supplement to the use of fuels

should be encouraged.

The development of new energy sources and new techniques to use existing fuels more efficiently in an environmentally acceptable manner is essential to providing an adequate supply of electricity in the last two decades of this century. For this reason, the electric utility industry is greatly expanding its research and development effort. Government research in the energy field should be coordinated with this program.

The basic responsibility for generation, transmission and distribution of electric power in the United States should rest with private industry. Government should not preempt or usurp the responsibility to produce power or to direct its transmission and distribution to meet the needs of the public or any select group. Where government is the owner of power generating facilities, such as multiple-purpose hydroelectric facilities, the energy produced should be sold at wholesale on equal terms, without discrimination and at prices reflecting the full cost of capital and taxes comparable to those paid by investor-owned utilities. Similarly, prices for electricity sold at retail by government-owned and financed power suppliers should reflect full cost of money and taxes.

IV. Federal Lands

A. Energy Potential on Federal Lands

[Much of the nation's energy potential, including offshore oil and gas reserves, oil shale deposits, uranium, western coal deposits, and geothermal energy sources, is located on federal lands.] Potentially productive acreage owned by the federal government should therefore be open for exploration and

development at a rate and in a manner designed to maximize the timely development of these domestic resources with appropriate environmental safeguards.

B. Multiple Use and Wilderness Areas

Certain lands owned by the federal government are devoted to, or are available for, watershed protection, forestry and forest products, mining, oil and gas production, agriculture and grazing, wildlife and recreation. The concept of compatible multiple use should be followed so that mineral resource development may take place along with other uses such as forestry, wildlife, agriculture and recreation.

Human needs for wilderness areas should be recognized, and appropriate areas set aside now on the basis of scenic beauty, proximity to population centers, impact on local economies, and other reasonable criteria. Lands proved not to meet these criteria and offering proven potentials for energy sources should be promptly opened to mineral resources development.

C. Transmission Lines

The authority to preserve and protect the public lands, and any regulations purporting to be issued in accordance with such authority, should not be misused to advance federal power operations or to hamper the planning, construction and operation of non-federal transmission lines.

D. Boundaries of Federal Offshore Lands

Current proposals to internationalize ocean areas beyond a depth of 200 meters is inhibiting exploration in such areas and should be strongly opposed. The United States is urged to assert promptly and forthrightly its

exclusive jurisdiction over the mineral resources of the entire submerged portion of the continent off its shores seaward of state-owned offshore areas down to its junction with the abyssal ocean floor. The United States should work with other nations toward the ultimate objective of precise demarcation of boundaries of coastal nations' natural resources jurisdiction.

E. Withdrawals

Congress should provide that before any federal land withdrawals of magnitude be made, there first be a public hearing on the proposed withdrawal in the state or states affected. A time limit should be placed on temporary withdrawals and withdrawals of 5,000 acres or more should require prior Congressional approval.

Senator HASKELL. We will reconvene the hearing.

Again, I have to go out of order, this time in deference to the Governor of my State, who unfortunately, broke his foot skiing. So if you don't mind, we will ask Governor Love to proceed.

The gentleman I see pushing him I usually see driving his car, but now he has some other duties.

It is a great pleasure to have you here with us, Governor, and if you will proceed in your own way, I am sorry there aren't more people here, but there happens to be a vote going on at the moment.

STATEMENT OF HON. JOHN A. LOVE, GOVERNOR OF COLORADO

Governor LOVE. Thank you very much, and I don't want you to misinterpret, I look as if I thought the legislation under consideration was to require better implementation of ramps in all public buildings.

I understand the purpose of the hearing and I was more than pleased to again receive an invitation to present testimony before this committee on the important problem of land use in the United States.

My pleasure is attributable to several reasons.

First, I am firmly of the conviction that land and its use lies squarely at the heart of the problems of environmental controls and improvement.

Secondly, we in Colorado have been involved for some years now in necessary land use planning in advance of most other States, I believe.

We are now in the current session of our legislature moving toward implementation of what I consider to be far-reaching and hold planning.

I think the most valuable contribution I can make today is to present our experience and a test case against which it would be possible to test the provisions of the legislation now before you.

As I have said, several years ago Colorado recognized the necessity of statewide land planning. We established and staffed a citizens commission which proceeded diligently to compile complex detailed data on flood plains and water available, our present stated land use and many other things.

In addition, the commission was instrumental in originating some legislation on subdivision control, financial aid to local units of government for planning purposes and a few other matters which were beyond strict planning.

This year in my annual address to the legislature I noted with approval the progress that had been made, but also noted that the time had come to go further.

I commented that since the beginning of the national land use decisions had been made on the basis of the free market. Developers will build houses where they can be sold and let few other considerations affect their decision.

I also noted that it is relatively easy to determine the patterns of land use that a free market produces and stated perhaps with less than full courtesy to sister States that the sprawl of Los Angeles or the deteriorating core of Newark are not suitable goals for Colorado.

Admitting it is not a wholly pleasant or certainly easy course, I submitted that if we are indeed serious about changing the pattern or patterns, we would have to provide for more governmental intrusions into those decisions.

As the first step in the process, I suggested we must have some goal, some vision of how we would like Colorado to develop and look at the next 10, 20, or 30 years.

The planners seemed somewhat reluctant to settle simply for pretty shapes and colors on a static map.

I agree that no person or group has the wisdom and foresight to provide an arbitrary plan that will survive and serve through the years without change. But I am also firmly convinced that it is impossible to devise programs that will change patterns without a vision of what it is we are trying to do.

As a consequence, the land use commission has provided two maps. I think I only have a copy of the one with me today, but I want to talk about it in a minute.

The first one simply forecasts how Colorado would develop by the year 1990 if we do nothing about land use. To me at least it is very persuasive that we must act.

The other map is a concept of what an alternative goal could be. As you will note, when I pass up the map, you will see this map is tentative and designed not to provide exact lines or boundaries at the moment, but rather to express graphically a conceptual goal.

Basically it suggests a cluster or modular plan for urban areas rather than a continuation of sprawl.

It further suggests that firm limits be placed on boundaries of urban units and these units be surrounded by open space prior to the time that another modular development could take place.

The concept of open space, by the way, is difficult, of course, and not yet fully defined in our process.

In addition, we are planning a concept of scenic highways on the area of each side of the right-of-way extensive enough to proscribe strip development.

We are still discussing how the plan should be further defined. Most at this point believe that a program which requires the local units to devise a plan for their area which would conform to the State plan is the most practical way to approach it.

In the meantime a halt would be called to annexations, formation of special districts and other actions which would carry us farther down along the road pending the production of an approved plan.

Around the plan would be built requirements that water and other services, transportation and all the other relevant activities that do push growth one way or another would be tested and controlled by their confirmation to the State plan.

It seems to me this plan points to several areas of relevance insofar as the Federal legislation is concerned.

First let me point out that in Colorado some 36 percent of the land is federally owned. It is obvious, of course, that for any plan to be effective there must be some way in which the Federal and State land activities are coordinated if either is to succeed.

Of course, it is made more complex in Colorado by the wide range of Federal agencies and purposes that are involved.

In the broad approach, I would hope that if the State plan is found acceptable to the Federal authorities, then Federal land activities would be forced to consider and to comply with the plan.

Secondly, I would suggest that many of the problems of State and local relationship that we are meeting find they are parallel in the State and Federal relationship.

Again, I would suggest that just as we perhaps shall look to the cities and counties to plan and formulate with overall State goals, you should look to the States to plan and form the national goals.

We have found in order to do this, it is appropriate to provide financial assistance to the cities and counties. I believe you, too, have recognized the relevance of Federal support to the States.

We at the State level have sanctions such as prohibition against further annexations pending creation of a further acceptable plan. You at the Federal level have primarily financial sanctions such as withholding of planning aid and other environmental funds.

The important concept, it seems to me is that there must be coordination among the multitude of well intentioned programs, both State and Federal, designed to point them all toward an acceptable plan and pattern.

In Colorado a program of land use planning is high on the list of priorities of our citizens.

We are hopeful that together we can accomplish a better pattern and a better future.

If I may, I would like to ask someone to pass up a few of those maps.

Senator HASKELL. Governor, could we have those maps included in the record, would that be satisfactory to you?

Governor LOVE. Yes.

Senator HASKELL. So that Senator Fannin who just came in will know, this map illustrates what, Governor Love?

Governor LOVE. Well, there are two maps there.

The one on your right, I believe, is the map that is projecting how the urban density development would occur by the year 1990 if we do nothing.

You see the present sprawl along the east slope of the Rockies.

The other map is the conceptual map. As I said in my more formal testimony, the lines are certainly not exact. But as an alternative, as a concept, as a goal, rather than the sprawl which is illustrated by the first map, the intent to make requirements that there be definative limits to an urban unit, such as Arrora or whatever community you are familiar with, so that the yellow indicates the urban, the more dense business, the green the open space concept which surrounds the cluster or modular kind of concept.

Using the Colorado Springs area for example, this at the moment, and we are still working hard on it at the legislature, would require that El Paso, Colorado Springs, so on, would be required to come up with a local plan which would fit in concept and in the meantime be restrained from further annexation of special districts and so on which would continue to spread and sprawl.

The green areas along the highways are an illustration of the scenic highway concept as another kind of control to prevent strip development and finally, a very great interest to me in this particular context, the green on the map represents governmental ownership.

Most little squares on the east slope are State land, school land, but the green areas in the mountains are all Federal land and it indicates, while I quoted the figure of some 36 percent Federal ownership, when you get to the western slope, it is perhaps double that, 70 percent.

COLORADO 1990

PURPOSE OF THIS MAP

THIS MAP DELINEATES POTENTIAL LAND CONSUMPTION PATTERNS BASED ON A CONTINUATION OF PRESENT TRENDS OVER THE NEXT 20 YEARS.

THE DATA UTILIZED IN THE DEVELOPMENT OF THIS MAP INCLUDED THE FOLLOWING:

- CURRENT DEVELOPMENT PATTERNS
- LOCAL AND REGIONAL PLANS AND LAND USE POLICIES
- EXISTING AND PROPOSED WATER AND SEWER SERVICE AREAS
- TRANSPORTATION FACILITIES
- ESTIMATED GROWTH POTENTIAL OF EXISTING AND POTENTIAL DEVELOPMENT CONCENTRATIONS

ANALYSIS OF THIS DATA INDICATES ECONOMIC AND LAND USE POLICIES CHARACTERIZED AS FOLLOWS:

1 THE CURRENT IMBALANCE IN THE DISTRIBUTION OF BOTH JOBS AND PEOPLE LOCATED WITHIN THE FRONT RANGE BETWEEN FORT COLLINS AND PUEBLO.

2 AS A RESULT, MASS TRANSIT ALTERNATIVES WILL BECOME INFEASIBLE; AVERAGE TRIP LENGTHS AND ASSOCIATED FUEL, FACILITIES AND POLLUTION COSTS WILL CONTINUE TO INCREASE; THE CONFLICTS BETWEEN EXISTING, EXPANDING AND FUTURE JURISDICTIONS WILL INTENSIFY; AREAS OF EXISTING DEVELOPMENT WILL CONTINUE TO DETERIORATE IN THE SHIFT TO NEW DEVELOPMENT OF THE EVER-EXPANDING PERIPHERY; AND THE EXISTING IMBALANCE OF RECREATION FACILITIES AND DEMAND ASSOCIATED WITH THE FRONT RANGE WILL BECOME EVEN MORE CRITICAL, FURTHER REDUCING THE QUALITY OF LIFE OF THE MAJORITY OF COLORADO CITIZENS.

3 MANY RURAL COMMUNITIES WHICH HAVE BEEN BASED ON AGRICULTURE, MINING, OR UPON THE PROVISION OF SERVICES TO RURAL POPULATIONS WILL CONTINUE TO EXPERIENCE DECREASES IN BOTH POPULATION AND ECONOMIC ACTIVITY.

4 SOME PORTIONS OF THE STATE OUTSIDE THE FRONT RANGE WILL EXPERIENCE FUTURE DEVELOPMENT BY REASON OF:

- EMPLOYMENT-BASED GROWTH IN EXISTING COMMUNITIES SUCH AS IN FORT MORGAN, ROCKY FORD, LA JUNTA, MONTROSE AND GRAND JUNCTION WHICH HAVE LOCATIONAL ADVANTAGES, AMENITIES, AND FACILITIES TO PROVIDE THE SUBSTANCE FOR SUCH FUTURE GROWTH.
- SPECIAL DEVELOPMENTS LOCATED TO EMPLOYMENT ACTIVITIES WITH UNIQUE LOCATIONAL REQUIREMENTS SUCH AS OIL SHALE DEVELOPMENT AND OTHER MAJOR MINERAL OPERATIONS.
- RECREATION-BASED GROWTH ORIENTED TO SPECIFIED TOURISM AND RECREATION FACILITIES SUCH AS SKI AREAS, LAKES AND RESERVOIRS, FOREST AND WILDERNESS AREAS, HISTORICAL SITES.
- SECOND-HOME DEVELOPMENTS WHICH WILL OCCUR PRINCIPALLY AS INTENSE CONCENTRATIONS AROUND RECREATION AREAS AND AS LOWER-DENSITY, SINGLE FAMILY DEVELOPMENTS SCATTERED THROUGHOUT THE STATE.

AS ILLUSTRATED, THE CONTINUATION OF THE CURRENT DEVELOPMENT TREND WILL HAVE AN ADVERSE IMPACT ON THE NATURAL RESOURCES OF THE STATE AND WILL CAUSE LONG-TERM ECONOMIC DETERIORATION EXTENDING THROUGHOUT MAJOR PORTIONS OF COLORADO.

TREND PATTERN

	1970 POPULATION	1970 PERCENT	1990 POPULATION	1990 PERCENT
NORTHWEST	80,502	3.6	163,500	4.4
MOUNTAINS	152,099	6.9	305,430	8.3
SOUTH CENTRAL	62,533	2.8	69,850	1.9
FRONT RANGE	1,778,750	80.6	3,001,700	81.7
HIGH PLAINS	133,375	6.1	135,600	3.7
STATE TOTAL	2,207,259	100.0	3,676,000	100.0

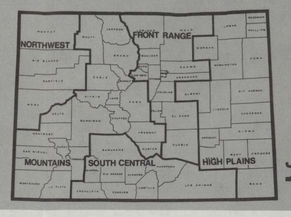
URBAN CONCENTRATIONS

AREAS COMMITTED TO CONTIGUOUS DEVELOPMENT

PUBLICLY OWNED LAND

10 miles 0 10 20 30 40

THE TREND PATTERN



COLORADO LAND USE COMMISSION

JANUARY 1973

COLORADO 1990

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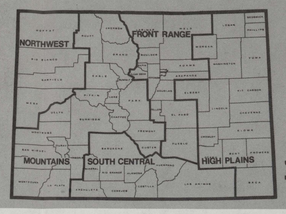

COLORADO LAND USE COMMISSION

JANUARY 1973

It points up to me the very great need for the kind of coordination necessary. That is, the planning for the Federal land does not comply with the State land or the planning for the State land does not comply with the Federal land.

We are both going to be wasting our time if they don't, as far as land use planning.

The areas primarily park and forest and so on, but also areas of potential open space, the military installations and so indicate there is a broad complexity of Federal ownership and interest.

I think that is the main point that I want to stress as a case study.

We, indeed, are serious about getting legislation through this session of the legislature which will help us to implement a concept like this as far as the land use planning for Colorado is concerned.

We would like to have from any Federal legislation, certainly, but primarily we would like some concept that if we do plan, and if Federal establishment thinks well of such a plan, there will be some advisers that can direct Agriculture and Interior that do own land in Colorado, that they must take this plan into consideration in determining whether they should open another ski area or lease oil shale or whatever it may be.

[The prepared statement of Governor Love follows:]

STATEMENT OF JOHN A. LOVE
GOVERNOR, STATE OF COLORADO

Before The

SENATE COMMITTEE ON INTERIOR AND INSURAL AFFAIRS

on the

LAND USE POLICY AND PLANNING ASSISTANCE ACT

Washington, D. C.
February 8, 1973

Senator Jackson, Members of the Committee:

I was more than pleased to again receive an invitation to present testimony before this Committee on the complex and important problem of Land Use in the United States, and its planning.

My pleasure is due to several reasons:

First, I am firmly of the conviction that land and its use lies squarely at the heart of our general problems of environmental controls, and environmental improvement.

Secondly, we in Colorado have been involved for some years now in necessary land use planning -- in advance of most of the other States I believe -- and are now in the current session of our legislature moving toward implementation of a far reaching and bold plan.

I think the most valuable contribution I can make today, is to present our experience as a test case against which it will be possible to test the provisions of the legislation now before you.

As I have said, several years ago Colorado recognized the necessity of statewide land planning. We established and staffed a Citizens Commission which proceeded diligently to compile the complex detailed data on flood plains, areas of geologic danger, water availability, and our present state of land use. In addition, the Commission was instrumental in originating some legislation on subdivision control, financial and to local units of government for planning purposes and a few other matters which were not strictly planning.

This year, in my annual address to the legislature, I noted with approval the progress that had been made, but also noted that the time had come to go farther.

I commented that since the beginning of this nation, land use decisions had been made on the basis of a free market. Developers will build houses where they can be sold, and let few other considerations affect their decision.

I also noted that it is relatively easy to determine the patterns of land use that a free market produces, and stated, perhaps with less than full courtesy to Sister States, that the sprawl of Los Angeles or tne deteriorating core of a Newark are not suitable goals for Colorado.

Admitting that it is not a wholly pleasant, nor certainly easy course, I submitted that if we are serious about changing the pattern we would have to provide for more governmental intrusion into those decisions that had been largely private.

As the first step in the process, I suggested that we must have some goal, some vision of how we would like Colorado to develop in the next ten, twenty or thirty years.

The planners seemed somewhat reluctant to settle simply for pretty shapes and colors on a static map.

I agree that no person or group has the wisdom and foresight to provide an arbitrary plan that will survive and serve through the years without change, but I also am firmly convinced that it is impossible to devise programs that will change patterns without a vision of what it is we are trying to do.

As a consequence, the Land Use Commission has provided, and I have with me today two maps.

One simply forecasts how Colorado would develop by the year 1990, if we do nothing about Land Use. To me, at least, it is very persuasive that we must act.

The other map is a concept of what an alternative goal could be. As you will note this map is tentative and designed not to provide exact lines or boundaries, but rather to express graphically a conceptual goal.

Basically, it suggests a cluster or nodular plan for urban areas rather than a continuation of sprawl. It further suggests that firm limits be placed on boundaries of urban units and that these units be surrounded by open space. The concept of open space, by the way, is yet to be fully defined.

In addition, we are contemplating a concept of scenic highways with the area on each side of the right of way, extensive enough to proscribe strip development.

We are still discussing how the plan shall be further refined. Most at this point believe that a program which would require the local units to devise a plan for their area which would conform to the State Plan is the most practical. In the meantime, a halt would be called to annexations, formation of special districts and other actions which would carry us farther down the wrong road, pending the production of an approved plan.

Around the plan would be built requirements that water and other services, transportation, and all the other relevant activities would be tested and controlled by their conformation to the State Plan.

It seems to me that this plan points to several areas of relevance in so far as federal legislation is concerned.

First, let me point out that, in Colorado, some 36% of the land is federally owned. It is obvious, of course, that for any plan to be effective there must be some way in which Federal and State land activities are co-ordinated.

It is made more complex by the wide range of Federal agencies and purposes that are involved.

In a broad brush approach, I would hope, that if the State plan is found acceptable to the federal authority then federal land activities would be forced to comply with the plan.

Secondly, I would suggest that many of the problems of State-Local relationships that we are meeting find their parallel in the State-Federal relationship.

Again, I would suggest that just as we shall look to the cities and counties to plan in conformity with the State's goals, you should look to the States to plan in conformity with national goals.

We have found that in order to do this, it is appropriate to provide financial assistance to the cities and counties. You, too, have recognized the relevance of Federal support to the States.

We, at the State level, have sanctions, such as prohibition against further annexations, pending creation of an acceptable plan. You at the Federal level have primarily financial sanctions, such as withholding of planning aid --- or even other environmental funds. The important concept, it seems to me, is that there must be coordination among the multitude of well-intentioned programs, both state and federal, designed to point them all toward an accepted plan or pattern.

In Colorado, at least, a program of Land Use planning is high on the list of priorities of our citizens.

We are very hopeful that together we can accomplish a better pattern --- a better future.

Thank you.

Senator HASKELL. There is another bill before this committee that, if it passes, would require public lands to adopt the plan and coordinate it with the State.

Governor LOVE. That is very encouraging, I hope it will be made law.

Senator HASKELL. Governor, I congratulated you privately on your address to the legislature on this subject which I think is very magnificent and forceful, and I would like to compliment you publicly on it, because I think wou have shown yourself to be a leader in this field.

We have had, Governor, a series of people testifying and at least in two areas there seems to be quite a difference in viewpoint.

I would like to describe the area and ask you what your viewpoint is.

First is the question of the Federal role. One school of thought of people testifying here is that the Federal Government should merely say that the State enter into a procedure, and even, for instance in answer to my question in our State, if the procedure dictated a solid asphalt development from Fort Collins to Pueblo, then that in Colorado is their prerogative, and that should be it. As long as they go through the procedures, the Federal Government should require nothing more.

The other school of thought is that there should be broad guidelines. Nobody wants the Federal Government, and I assume you don't want the State government, to get into detailed zoning. But the other school of thought says there should be some kind of broad public policy statement which would then permit the Federal agency, if a State should come up with a very, very, very bad program, to ask the State to re-do it.

Now, I don't know whether you have given this subject matter any thought, but if you have or if you have an immediate reaction, I would certainly like to have that.

Governor LOVE. Well, first let me make the caveat that I have a very strong opinion, not only in this area, but in all of the areas practically of government, domestic government in the United States, and that the State is the necessary administrative agency and I stress that. But having said that, I also believe that that particular question is parallel with our situation here at the State level in which we don't believe we should sit in the Capitol and do the detailed planning for Colorado Springs. But at the same time, in order to bring a statewide prospective to it, we do believe we can require them to so plan that it will fit a concept, the broad principles that we outline.

I think that would be parallel with the State and Federal relationship that you asked the question about.

Senator HASKELL. Thank you, Governor.

Now, the other split of opinion, if I can call it that, relates to sanctions. There is one school of thought that says there should be no sanctions. That is assuming the State says no, we don't want a plan at all, that should be their prerogative.

The other school of thought says there should be sanctions of some kind. I wonder if you have a comment on that?

Governor LOVE. It seems to me here that the parallel ceases to some extent. We do have very real sanctions that we can impose in the State-local relationship area with the laws on annexation, formation of special districts, and so on.

Other than the withholding of planning aid, financial aid to the States for this purpose, I don't readily see what sanctions are available to you.

Senator HASKELL. Thank you, Governor.

That is all the questions I have. I am sure Senator Fannin may have some.

Senator FANNIN. Yes, thank you, Mr. Chairman.

I want to welcome you here, Governor Love.

I am sorry to see you in the wheelchair—I suppose you are trying to publicize that you live in the skiing capital of the world.

Governor LOVE. It wasn't my intent when I started, but if it happened, I will use it that way.

Senator FANNIN. I have been very impressed with your testimony. I wish I were present to hear all of it, but I had to go vote.

I know your leadership in this activity and the leadership you have given your State. You can be very proud of your accomplishments and effort to bring about a land-use planning program in your State.

At the Federal level we want to provide every assistance possible without forcing unreasonable demands on those sponsoring the programs. It would be our desire to assist in the funding and try to work out guidelines with principles that can be carried through there.

Of course, we all realize there is much more involved than just one State. We must have a national policy which can be formulated to give sufficient latitude to States which are so vastly different. Otherwise the program might diminish in one State and be effective in an entirely different way in another.

Now, in regard to the section of the bill on statewide land use planning processes. I would like to ask you if you had an opportunity to review this bill. Assuming you have reviewed it, how much would the requirement set forth for mandatory State planning be?

Governor LOVE. I just scanned this for a moment and it looks to me in scanning it that this pretty well describes exactly the process our land use commission has been going through. It isn't a very diverse and lengthy kind of process, but you have to have this kind of data in order to move, it seems to me.

Senator FANNIN. Very good, and I am pleased you have already taken some of the steps. The reason I raise the question is that some of the States do not believe they can, within the time period involved, amend State laws to carry through the requirements and institute the plan.

I am unsure what can be done in this respect.

Governor LOVE. We have, and I have not come to that part where the amendment to the State laws is——

Senator FANNIN. It would be in accordance with the follow through of the requirements.

Some State laws would need an amendment. I wouldn't say how many because I don't know. I think we would.

Governor LOVE. In addition to forming the land use commission to do the planning and collection of data, we have amended some laws, particularly about the requirement that subdivisions must appropriately prove the availability of water, sewage and other services prior to the time that they can be legally subdivided.

We have had some other legislation with regard to water that had a particular effect.

We hope to move very substantially legislatively at this session.

As far as the other States, I don't know what the time limit is.

Senator FANNIN. It would really be a 3-year period before the Federal Government would determine the adequacy of the State program and whether you have been applying whatever effort is necessary to bring about the completion of a program. Then you would have 2 additional years in which you would work with the Government and the Federal agencies. So really there would be a 5-year period involved.

Governor LOVE. I think, for whatever help it would be, we have been involved with the actual kind of planning data that is described here for something like a little over 2 years.

So I would think a 5-year period probably would be adequate.

As a matter of fact, we feel that time is imperative, that is, if you don't do it in that period of time, at least in Colorado, it is going to get completely away from you.

Senator FANNIN. Some Governors have approved the sanctions. Others have objected strongly to them.

There is one great problem from the standpoint of sanctions, that is the use of trust funds. So I felt that perhaps sanctions could be applied without delving into the possibility of setting a precedent attaching sanctions to the trust funds. What would be your position in this regard?

Governor LOVE. I, in my prepared testimony, indicated that perhaps sanctions by withholding of planning aids certainly is one very acceptable method.

If you go beyond that to areas withholding funds for other environmental purpose or programs, it may be overreacting and you would destroy worthwhile programs or damage them without an offsetting benefit.

Senator FANNIN. Well, thank you very much, Governor Love.

We have a direct sanction between State and local, and I don't see any direct sanction between Federal and State.

Just one last question before we suspend.

Should Indian lands within your State be included in the land use process rather than excluded? I ask this question from the standpoint of the people surrounding the reservation and Indian tribes on the reservation. Are we being fair if we do not provide some protection for them? In other words, if the Indians developed an industry on the reservation and coincidentally a livestock company located next door certain difficulties would be credited.

Would you think that it would be wise to include the Indian lands in this bill?

Governor LOVE. Well, certainly in your State, to a lesser extent certainly in Colorado, I think. I am not sure of the mechanics.

Senator FANNIN. Well, the Indians are left out of the bill.

As you are well aware when we consider the application of rules and regulations to Indian Reservations we must first determine the effect on the trustee responsibilities of the Secretary of Interior. But I feel in this instance it would be advantageous for the tribes, since they could develop their lands to a greater advantage and encourage better development.

I am sorry we can't expand on this matter. I very much appreciate your being here today.

Governor LOVE. May I indicate one general thing.

Of course, you can't touch and use without touching a lot of problems and philosophies and programs. The one that appears readily, in attempting to devise an overall goal or plan, whether it be the Federal level or State level, is the distribution of population, a concern that I am sure all of us who have testified in that regard have. You have heard many, many hours of testimony, I imagine.

Land planning itself, at least as I envisage it, will not necessarily solve the better distribution of population. Its main use, it seems to me, is to so control and order that we limit the destruction as we go into certain values.

Other programs, I think, will be required to encourage or perhaps even subsidize the further distribution of population that I hold to be of advantage to the long-range plan.

Senator HASKELL. Thank you, Governor, very much indeed. We have to recess the hearings for just a few minutes for a vote and if Mr. Atiyeh can stay just a few minutes, we will take him as soon as we come back.

[Recess.]

Senator HASKELL. The hearing will be in order.

I understand that Mr. Atiyeh from Oregon has to catch a plane. I hope he still has time to present his testimony. Is he still here?

I would like to ask the full panel of State legislators to come forward and ask Mr. Atiyeh to lead off.

STATEMENTS OF A PANEL OF STATE LEGISLATORS: HON. VICTOR ATIYEH, SENATOR, OREGON SENATE; HON. GERALD HORTON, REPRESENTATIVE, GEORGIA HOUSE OF REPRESENTATIVES; HON. RICHARD LAMM, REPRESENTATIVE, COLORADO HOUSE OF REPRESENTATIVES; AND HON. PHILIP MASTIN, REPRESENTATIVE, MICHIGAN HOUSE OF REPRESENTATIVES

Mr. ATIYEH. Thank you, Mr. Chairman. We missed the plane; we are working on another one now.

Senator HASKELL. Oh, you are? I hope you are successful.

Mr. ATIYEH. Mr. Chairman, I am Victor Atiyeh, State senate minority leader from the State of Oregon, which is the only solace we have received out of the last election, and a member of the senate land use and environment committee. I want to thank you for the privilege of appearing here today and setting up the time to hear from the State legislators.

Oregon has hundreds of laws and administrative regulations on its books which were designed to preserve the beauty of our State. Oregon's last electoral alone passed some 100 out of 300 environmental measures that were introduced. Still more are planned for this session. Included is a bill on land use planning which has been patterned, to some extent, after 268. I might add we referred to this before, Mr. Chairman, it is our senate bill 100, and I am wondering if the committee would like copies of our bill to see how it is drafted and formed?

Senator HASKELL. We would like a copy and I will ask that it be included in the record. Can you supply it within a week?

Mr. ATIYEH. Yes.

[The material requested follows:]

OREGON LEGISLATIVE ASSEMBLY—1973 REGULAR SESSION

REPRINT

Senate Bill 100

Sponsored by Senators MACPHERSON, HALLOCK

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Creates Department of Land Conservation and Development, composed of Land Conservation and Development Commission, director and employes. Establishes Joint Legislative Committee on Land Use, as standing committee, to advise and assist department in carrying out its duties.

Designates areas and activities of critical state concern and provides for additional designations, subject to approval of Legislative Assembly. Requires commission, subject to approval of Legislative Assembly, to promulgate and implement state-wide objectives and regulations for such areas and activities and state-wide planning guidelines for all land use planning in state. Requires state agencies, planning districts, cities, counties and special districts to comply with state-wide planning guidelines and state-wide objectives and regulations in adoption of comprehensive plans and zoning, subdivision or other ordinances and regulations.

Requires development permit to be issued by commission for development projects constituting activities of critical state concern. Provides for enforcement of permit requirements. Declares certain development projects to be public nuisances, subject to civil abatement proceedings by commission.

Establishes 14 planning districts in state to advise, assist and review actions and comprehensive plans of state agencies, cities, counties and special districts with respect to such districts.

Requires, within one year after approval of state-wide planning guidelines, all comprehensive plans and zoning, subdivision or other ordinances or regulations to comply with such guidelines. Authorizes Governor to prescribe comprehensive plans and such ordinances and regulations where none exist or to revise existing noncomplying plans, ordinances and regulations. Permits Governor to charge for his services. Provides, in case of nonpayment by city or county, for reimbursement of Governor from city or county share of state liquor and cigarette revenues.

Provides for review by commission of specified land conservation and development actions and plans. Establishes Land Conservation and Development Account in General Fund for use by department.

Declares emergency and takes effect July 1, 1973.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

A BILL FOR AN ACT

Relating to land use; creating new provisions; amending ORS 215.055, 215.510, 215.515, 215.535 and 227.240; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

PART I INTRODUCTION

PREAMBLE

SECTION 1. (1) Uncoordinated use of lands within this state threaten the orderly development, the environment of this state and the health, safety, order, convenience, prosperity and welfare of the people of this state.

(2) To promote coordinated administration of land uses consistent with comprehensive plans adopted throughout the state, it is necessary to establish a process for the review of state agency, planning district, city, county and special district land conservation and development plans for compliance with state-wide planning guidelines.

(3) Except as otherwise provided in subsection (5) of this section, cities and counties should remain as the agencies to consider, promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions.

(4) To promote coordinated conservation and development of all land uses within geographic areas of this state, it is necessary to establish planning districts and district councils to coordinate efforts of state agencies, cities, counties and special districts within each planning district.

(5) The promotion of coordinated state-wide land conservation and development in areas and for activities of critical state concern requires the creation of a state-wide planning agency to prescribe planning objectives and regulations to be applied by state agencies, cities, counties, district councils and special districts within areas of critical state concern throughout the state.

(6) The impact of proposed development projects, constituting activities of critical state concern, upon the public health, safety and welfare requires a system of permits issued by a state-wide agency to carry out

state-wide objectives and regulations prescribed for application for activities of state-wide concern throughout this state.

POLICY STATEMENT

SECTION 2. In order to assure the highest possible level of liveability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:

(1) Must be adopted by the appropriate governing body at the local, regional and state levels;

(2) Are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;

(3) Shall be the basis for more specific rules, regulations and ordinances which implement the policies expressed through the comprehensive plans;

(4) Shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans; and

(5) Shall be regularly reviewed and, if necessary, revised to keep them consistent with the changing needs and desires of the public they are designed to serve.

DEFINITIONS

SECTION 3. As used in this Act, unless the context requires otherwise:

(1) "Activity of critical state concern" means a land conservation and development project designated pursuant to section 32 of this Act.

(2) "Area of critical state concern" means a geographic area of the state designated pursuant to section 31 of this Act.

(3) "Commission" means the Land Conservation and Development Commission.

(4) "Committee" means the Joint Legislative Committee on Land Use.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a state agency, planning district, city, county or special district that interrelates all functional and natural systems and activities relating to the use of lands, including

but not limited to sewer and water systems, transportation systems, educational systems, recreational facilities, and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semi-public and private agencies and groups have been considered and accommodated as much as possible. "Land" includes water, both surface and sub-surface, and the air.

(6) "Department " means the Department of Land Conservation and Development.

(7) "Development" means the carrying out of any building or mining operation, or the material change in the use or appearance of any structure or land, or the change in the intensity of the use of land, or the departure from the normal use of land for which permission has been granted. "Development," as designated in an ordinance, rule or development permit, includes all associated building, mining, changes and departures, unless otherwise specified. When appropriate to the context, "development" also includes the act of developing and the result of development.

(8) "Director" means the Director of the Department of Land Conservation and Development.

(9) "District Council" means the district council of local governments established for an association of local governments pursuant to section 19 of this Act.

(10) "Planning district" means a geographic area of the state designated pursuant to section 18 of this Act.

(11) "Special district" means any unit of local government, other than a city or county, authorized and regulated by statute and includes, but is not limited to: Water control districts, irrigation districts, port districts, air pollution control districts, fire districts, school districts, hospital districts, mass transit districts and sanitary districts.

PART II ORGANIZATION, ROLES AND RESPONSIBILITIES

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

SECTION 4. The Department of Land Conservation and Development is established. The department shall consist of the Land Conservation and Development Commission, the director and their subordinate officers and employes.

SECTION 5. (1) There is established a Land Conservation and Development Commission consisting of five members appointed by the Governor, subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570.

(2) In making appointments under subsection (1) of this section, the Governor shall select from residents of this state one member from each congressional district and one member from the state at large.

(3) The term of office of each member of the commission is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor. No person shall serve more than two full terms as a member of the commission.

(4) If there is a vacancy for any cause the Governor shall make an appointment to become immediately effective for the unexpired term.

SECTION 6. Notwithstanding the term of office specified in section 5 of this Act, of the members first appointed to the commission:

(1) Two shall serve for a term ending June 30, 1974.

(2) One shall serve for a term ending June 30, 1975.

(3) One shall serve for a term ending June 30, 1976.

(4) One shall serve for a term ending June 30, 1977.

SECTION 7. (1) The commission shall select one of its members as chairman and another member as vice chairman, for such terms and with duties and powers necessary for the performance of the functions of such offices as the commission determines. The vice chairman of the commission shall act as the chairman of the commission in the absence of the chairman.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business.

SECTION 8. Members of the commission are entitled to compensation and expenses as provided in ORS 292.495.

SECTION 9. The commission shall:

(1) Direct the performance by the director and his staff of their functions under this Act.

(2) In accordance with the provisions of ORS chapter 183, promulgate rules and regulations that it considers necessary in carrying out this Act.

(3) Cooperate with the appropriate agencies of the United States, this state, any other state, any interstate agency, any person or groups of persons with respect to land conservation and development.

(4) Appoint advisory committees to aid it in carrying out this Act and provide technical and other assistance, as it considers necessary, to each such committee.

(5) Consult with advisory committees, appointed by each district council pursuant to subsection (5) of section 22 of this Act, in carrying out its duties under this Act.

SECTION 10. The commission may:

(1) Apply for and receive moneys from the Federal Government and from this state or any of its agencies or departments.

(2) Subject to the approval of the Governor, contract with any public agency for the performance of services or the exchange of employes or services by one to the other necessary in carrying out this Act.

(3) Contract for the services of and consultation with professsional persons or organizations, not otherwise available through federal, state and local governmental agencies, in carryinng out its duties under this Act.

(4) Perform any other functions that it considers necessary to carry out this Act.

SECTION 11. Pursuant to the provisions of this Act, the commission shall be responsible for:

(1) Establishing state-wide planning goals;

(2) Issuing permits for activities of critical state concern;

(3) Preparing state-wide objectives and regulations for areas and activities of critical state concern;

(4) Preparing inventories of land uses;

(5) Preparing state-wide planning guidelines;

(6) Reviewing comprehensive plans for conformance with state-wide objectives and regulations and state-wide planning guidelines.

(7) Reporting to the legislature as provided in sections 64 and 68 of this Act; and

(8) Performing any other duty required by law.

SECTION 12. If an interstate land conservation and development planning agency is created by an interstate agreement or compact entered into by this state, the commission shall perform the functions of this state with respect to the agreement or compact. If the functions of the interstate planning agency duplicate any of the functions of the commission under this Act, the commission may:

(1) Negotiate with the interstate agency in defining the areas of responsibility of the commission and the interstate planning agency;

(2) Suspend by rule the performance of any functions granted to the commission under this Act that duplicates a function of the interstate planning agency; and

(3) Cooperate with the interstate planning agency in the performance of its functions.

SECTION 13. (1) The commission shall appoint a person to serve as the Director of the Department of Land Conservation and Development. The director shall hold his office at the pleasure of the commission and his salary shall be fixed by the commission unless otherwise provided by law.

(2) In addition to his salary, the director shall be reimbursed, subject to any applicable law regulating travel and other expenses of state officers and employes, for actual and necessary expenses incurred by him in the performance of his official duties.

SECTION 14. Subject to policies adopted by the commission, the director shall:

(1) Be the administrative head of the department.

(2) Coordinate the activities of the department in its land conservation and development functions with such functions of federal agencies, other state agencies, district councils, cities, counties and special districts.

(3) Appoint, reappoint, assign and reassign all subordinate officers and

employes of the department, prescribe their duties and fix their compensation, subject to the State Merit System Law.

(4) Represent this state before any agency of this state, any other state or the United States with respect to land conservation and development within this state.

SECTION 15. (1) There is established in the General Fund in the State Treasury the Land Conservation and Development Account. Moneys in the account are continuously appropriated for the purpose of carrying out the provisions of this Act.

(2) All fees, moneys and other revenue received by the department or the committee shall be deposited in the Land Conservation and Development Account.

OREGON COASTAL CONSERVATION AND DEVELOPMENT COMMISSION

SECTION 16. (1) The Land Conservation and Development Commission may delegate, by agreement, to the Oregon Coastal Conservation and Development Commission, created by ORS 191.120, any of its functions; however, the Land Conservation and Development Commission shall review and grant prior approval for any action taken by the Oregon Coastal Conservation and Development Commission with respect to a delegated function.

(2) The Land Conservation and Development Commission may provide staff and financial assistance to the Oregon Coastal Conservation and Development Commission.

SECTION 17. Pursuant to subsection (1) of section 16, the Oregon Coastal Conservation and Development Commission may carry out, within the coastal zone described in subsection (4) of ORS 191.110 and during the time period specified in subsection (2) of ORS 191.140, the functions of the Land Conservation and Development Commission in preparing statewide objectives and regulations for areas and activities of critical state concern.

DISTRICT COUNCILS OF LOCAL GOVERNMENT

SECTION 18. To assure the orderly development and conservation of the state through the encouragement of coordinated federal, state, regional

and local land use planning, the following planning districts are created:

(1) District 1 which is composed of Clatsop and Tillamook Counties.

(2) District 2 which is composed of Columbia, Washington, Multnomah and Clackamas Counties.

(3) District 3 which is composed of Yamhill, Polk and Marion Counties.

(4) District 4 which is composed of Lincoln, Benton and Linn Counties.

(5) District 5 which is composed of Lane County.

(6) District 6 which is composed of Douglas County.

(7) District 7 which is composed of Coos and Curry Counties.

(8) District 8 which is composed of Jackson and Josephine Counties.

(9) District 9 which is composed of Hood River, Sherman and Wasco Counties.

(10) District 10 which is composed of Deschutes, Jefferson and Crook Counties.

(11) District 11 which is composed of Klamath and Lake Counties.

(12) District 12 which is composed of Gilliam, Morrow, Umatilla, Wheeler and Grant Counties.

(13) District 13 which is composed of Wallowa, Union and Baker Counties.

(14) District 14 which is composed of Harney and Malheur Counties.

SECTION 19. (1) There is created a district association of local governments in each planning district of this state. Each association shall be comprised of all cities, counties and special districts situated within the planning district.

(2) There is created for each association a district council of local governments with a membership as provided in section 20 of this Act. Not later than the expiration of 10 days after the effective date of this Act, the chairman of the county governing body of the most populous county in each planning district shall call a meeting of the members of the council for the planning district described in section 20 of this Act.

SECTION 20. (1) The membership of a district council of local governments for a planning district shall consist of:

(a) The chairman of the board of commissioners, or in his stead, a

member of the county commission selected by the county commission, for each county within the planning district;

(b) The mayor of the most populous city in each county, or, in his stead, a member of the city council selected by the mayor and city council of the most populous city in each county; and

(c) Such other members representing the remaining cities and special districts in the planning district as shall be deemed appropriate in the bylaws adopted by the district council.

(2)(a) Representatives from cities and counties described in subsection (1) of this section shall comprise at least two-thirds of the district council membership.

(b) The term of a member of a district council described in subsection (1) of this section shall be limited to two years.

(3) The voters of a planning district, from time to time and in the exercise of their power of the initiative or by approving a measure referred to them by the district council, may alter or revise the number, qualifications and manner of selecting members of the district council provided in subsections (1) and (2) of this section.

SECTION 21. Each district council shall establish a district planning committee with a membership as determined by the council; however, at least 50 percent of the membership of the committee shall be composed of representatives of city and county planning commissions within the planning district.

SECTION 22. Each district council, with the advice of its district planning committee, shall:

(1) Coordinate land conservation and development by the cities, counties and special districts within the planning district.

(2) Review the comprehensive plans prepared and proposed by cities, counties and special districts within the planning district for compliance with state-wide planning guidelines prescribed by the commission or approved by the Legislative Assembly.

(3) Review other comprehensive plans and zoning, subdivision and other ordinances or regulations prepared, proposed or adopted by cities, counties and special districts within the planning district for compliance with state-wide objectives and regulations prescribed by the commission

with respect to land conservation and development in areas and activities of criticial state concern within the planning district.

(4) Cooperate with the department, other state agencies, other district councils, special districts, cities and counties outside the planning district to coordinate land conservation and development within the state.

(5) Appoint advisory committees within the planning district, as necessary, to aid it in carrying out its land conservation and development functions within the planning district; provide technical and other assistance for such committees and consult with; and consider the recommendations of such committees in carrying out its duties under this Act.

SECTION 23. A district council, with the advice of its district planning committee, may:

(1) Provide land conservation and development planning, advisory and technical services to each special district, city or county engaged in land conservation and development within the planning district upon request and subject to payment therefor.

(2) Provide information, maps and other data pertinent to its duties to the commission or other agency of the state, other district councils, special districts, cities and counties within or without the planning district.

(3) Conduct, arrange or assist in the promotion of educational programs relating to land conservation and development in the state or planning district and the need for the coordinated planning thereof.

(4) Subject to the prior approval of the commission, join with any similar council or planning agency with jurisdiction over contiguous land situated in another state to form an interstate district council.

(5) Provide any other services or perform any other functions that it considers necessary in carrying out its duties under this Act.

CITIES AND COUNTIES

SECTION 24. Cities and counties shall exercise their planning and zoning responsibilities under ORS chapters 92, 215 and 227 in accordance with this Act and the state-wide objectives and regulations and the state-wide planning guidelines approved under this Act.

SECTION 25. Pursuant to this Act, each city and county in this state shall:

(1) Prepare and adopt comprehensive plans consistent with the state-

wide objectives and regulations for areas and activities of state concern and state-wide planning guidelines approved by the commission; and

(2) Enact zoning, subdivision and other ordinances or regulations to implement their comprehensive plans.

SPECIAL DISTRICTS AND STATE AGENCIES

SECTION 26. Special districts shall exercise their planning duties, powers and responsibilities that are authorized by law with respect to programs affecting land use in accordance with state-wide planning guidelines and state-wide objectives and regulations approved pursuant to this Act.

SECTION 27. State agencies shall carry out their planning duties, powers and responsibilities that are authorized by law with respect to programs affecting land use in accordance with state-wide planning guidelines and state-wide objectives and regulations approved pursuant to this Act.

JOINT LEGISTLATIVE COMMITTEE ON LAND USE

SECTION 28. The Joint Legislative Committee on Land Use is established as a joint committee of the Legislative Assembly. The committee shall select an executive secretary who shall serve at the pleasure of the committee and under its direction.

SECTION 29. (1) The Joint Legislative Committee on Land Use shall consist of four members of the House appointed by the Speaker and three members of the Senate appointed by the President. No more than three House members of the committee shall be of the same political party. No more than two Senate members of the committee shall be of the same political party.

(2) The committee has a continuing existence and may meet, act and conduct its business during sessions of the Legislative Assembly or any recess thereof, and in the interim period between sessions.

(3) The term of a member shall expire upon the convening of the Legislative Assembly in regular session next following the commencement of the member's term. When a vacancy occurs in the membership of the

committee in the interim between sessions, until such vacancy is filled, the membership of the committee shall be deemed not to include the vacant position for the purpose of determining whether a quorum is present and a quorum is the majority of the remaining members.

(4) Members of the committee shall be reimbursed for actual and necessary expenses incurred or paid in the performance of their duties as members of the committee, such reimbursement to be made from funds appropriated for such purposes, after submission of approved voucher claims.

(5) The committee shall select a chairman. The chairman may, in addition to his other authorized duties, approve voucher claims.

(6) Action of the committee shall be taken only upon the affirmative vote of the majority of the members of the committee.

SECTION 30. The committee shall:

(1) Advise the department on all matters under the jurisdiction of the department;

(2) Review and make recommendations to the Legislative Assembly on proposals for additions to or modifications of designations of areas or activities of critical state concern;

(3) Review and make recommendations to the Legislative Assembly on state-wide objectives and regulations and state-wide planning guidelines approved by the commission; and

(4) Make recommendations to the Legislative Assembly on any other matter relating to land use planning in Oregon.

PART III AREAS AND ACTIVITIES OF STATE CONCERN DESIGNATION

SECTION 31. The following geographic areas in this state are designated as areas of critical state concern:

(1) Any scenic waterway designated as such in accordance with ORS 390.805 to 390.925, including any related adjacent land.

(2) Any waterway in this state designated as a wild and scenic river pursuant to the federal Wild and Scenic Rivers Act, Public Law 90-542, including any adjacent lands regulated thereunder.

(3) All of the following lands, including adjacent lands situated within one-quarter of one mile of such lands' boundaries:

(a) State parks and recreation areas administered by the Highway Division of the Department of Transportation.

(b) Recreation, primitive or wilderness areas on lands administered by the U.S. Forest Service, the Bureau of Land Management, the National Parks Service and U.S. Army Corps of Engineers.

(c) Lands subject to the regulation of the State Game Commission, Fish Commission of the State of Oregon, Federal Bureau of Sport Fisheries or the Wildlife Refuge Division of the U.S. Department of Interior.

(d) Parks or recreation areas situated outside an incorporated area and administered by a unit of local government.

(e) Parks or recreation areas on lands under the jurisdiction of the State Board of Forestry or the Division of State Lands.

(4) Lands situated within a radius of one-half of one mile from the center of the right of way of a state highway that is a part of the National System of Interstate and Defense Highways established pursuant to section 103 (d), title 23, United States Code, at the point of its interchange with any other public highway where such point of interchange is not located within an incorporated area and such lands situated within a radius of one-quarter of one mile where such point of interchange is located within an incorporated area.

(5) All lands west of the Oregon Coast Highway as described in ORS 366.235, except that:

(a) In Tillamook County, Oregon, only the lands west of a line formed by connecting the western boundaries of the following described roadways: Brooten Road (County Road 887) northerly from its junction with the Oregon Coast Highway to Pacific City, McPhillips Drive (County Road 915) northerly from Pacific City to its junction with Sandlake Road (County Road 871), Sandlake-Cape Lookout Road, (County Road 871) northerly to its junction with Cape Lookout Park, Netarts Bay Drive (County Road 665) northerly from its junction with the Sandlake-Cape Lookout Road (County Road 871) to its junction at Netarts with State

Highway 131, and northerly along State Highway 131 to its junction with the Oregon Coast Highway near Tillamook.

(b) In Coos County, Oregon, only the lands west of a line formed by connecting the western boundaries of the following described roadways: FAS 263 southerly from its junction with the Oregon Coast Highway to Charleston; Seven Devils Road (No. 33) southerly from its junction with FAS 263 to its junction with the Oregon Coast Highway, near Bandon.

(6) All estuaries including all land extending 1,000 feet on a horizontal plane from the mean higher high-tide mark as located by reference to the tidal bench mark date prepared by the United States Coast and Geodetic Survey. As used in this subsection, "estuaries" means partially enclosed bodies of water where the tide ebbs and flows and where fresh water from the land meets the salt waters of the Pacific Ocean from the Pacific Ocean on the west to a point on the east where there exists a bottom salinity of five parts per thousand as measured at the time of the lowest water flow in summer.

(7) All lands within the area bounded on the west by the mouth of the Sandy River, on the north by the ordinary high water line of the Columbia River, on the east by the western boundary of the City of The Dalles, Oregon, and on the south by the ridge of the cliffs of the Columbia River Gorge.

(8) All lands situated within 1,000 feet from the right of way boundaries of highways designated under ORS 377.530 as scenic highways if such highways are not located within an incorporated area and all lands situated within 200 feet from the right of way boundaries of such highways if such highways are located within the boundaries of an incorporated area.

SECTION 32. (1) The following developmental activities are designated as activities that by their nature or magnitude are of critical state concern:

(a) The planning, siting and construction of airports.

(b) The planning, siting and construction of state and federal highway systems or any portion thereof.

(c) The planning, siting and construction of mass transit systems or any portion thereof.

(d) The planning, siting and construction of solid waste disposal sites and facilities.

(e) The planning, siting and construction of high-voltage power, gas and oil transmission lines.

(f) The planning, siting and construction of sewerage systems and water supply systems.

(g) The planning, siting and construction of thermal power plants and nuclear installations.

(2) Nothing in this Act supersedes any duty, power or responsibility vested by statute in any state agency relating to its activities described in subsection (1) of this section; except that, a state agency may neither implement any such activity nor adopt any plan relating to such an activity without the prior approval of the commission.

SECTION 33. (1) In addition to the areas of critical state concern designated in section 31 of this Act and the activities of critical state concern designated in section 32 of this Act, the commission may recommend to the committee the designation of additional areas or activities of critical state concern. Each such recommendation shall specify the reasons for the proposed designation of the area or activity of critical state concern, the dangers that would result from uncontrolled development within the area or by the activity, the reasons for the implementation of state-wide planning objectives and regulations for the proposed area or activity, and the suggested state-wide planning objectives and regulations to be applied within the proposed area or for the proposed activity.

(2) The commission may act under subsection (1) of this section on its own motion or upon the recommendation of a state agency, district council, city, county or special district. If the commission receives a recommendation from a state agency, district council, city, county or special district and finds the proposed area or activity to be unsuitable for designation, it shall notify the state agency, district council, city, council or special district of its decision and its reasons therefor.

(3) Immediately following its decision to favorably recommend to the Legislative Assembly the designation of an additional area or activity of critical state concern, the commission shall submit the proposed designation accompanied by the supporting materials described in subsection (1) of this section to the committee for its review.

PERMITS FOR ACTIVITIES OF STATE CONCERN

SECTION 34. (1) On and after 90 days after the effective date of this Act, no proposed development project constituting an activity of critical state concern designated under section 32 of this Act may be initiated by any person or public agency without a development permit issued by the commission therefor.

(2) Any person or public agency desiring to initiate a development constituting an activity of critical state concern shall apply to the department for a development permit for such project. The application shall contain the plans for the project and the manner in which such project has been designed to meet the objectives and regulations for activities of critical state concern and the comprehensive plans for the state and the planning district within which the development is proposed, and any other information required by the commission as prescribed by rule of the commission.

(3) The department shall transmit copies of the application to the appropriate district council and affected state agencies for their review and recommendation.

(4) The district council and the state agencies shall review an application transmitted to it under subsection (3) of this section and shall, within 30 days after the date of the receipt of the application, submit their recommendations on the application to the commission.

(5) If the commission finds after review of the application and the comments submitted by the district council and state agencies that the proposed project complies with the state-wide objectives and regulations for activities of critical state concern and the comprehensive plans within the planning district, it shall approve the application and issue a development permit for the proposed project to the person or public agency applying therefor.

(6) The commission may prescribe and shall include in the development permit such conditions or restrictions that it considers necessary to assure that the proposed development project complies with the statewide objectives and regulations for activities of critical state concern and the comprehensive plans within the planning district.

(7) If the activity requiring a development permit under this section also requires any other permit from any state agency, the commission, with the cooperation and concurrence of the other agency, may provide a joint application form and permit to satisfy both the requirements of this Act and any other requirements set by statute or by rule or regulations of the state agency.

SECTION 35. (1) If an application for a proposed development project constituting an activity of critical state concern designated by section 32 of this Act is received by the department prior to the adoption of statewide objectives and regulations for activities of critical state concern, the commission shall approve the application and issue a development permit for the proposed development project if such development project is in compliance with the comprehensive plans of a state agency, planning district, city or county and with zoning, subdivision and other ordinances and regulations adopted to carry out such comprehensive plans that are in effect on the date of the receipt of the application by the commission.

(2) If there are no state agency, planning district, city, or county comprehensive plans in effect within the area in which a development project described in subsection (1) of this section is to be located, the commission may issue a development permit and prescribe in the development permit reasonable conditions for the protection of the public health, welfare and safety.

SECTION 36. In reviewing under subsection (5) of section 34 of this Act an application for a development permit for a proposed development project constituting an activity of critical state concern, the commission shall consider whether or not:

(1) The location of a proposed development is essential or appropriate in view of the available alternative locations within or outside the district;

(2) The proposed development will have a favorable impact upon the environment in comparison to alternative manners of development;

(3) The proposed development will favorably affect other persons or property in view of any circumstances that are peculiar to the location, size or nature of the development;

(4) If the proposed development imposes immediate cost burdens on the city or county within which it is to be located, the amount of similar existing development within such city or county is more than an equitable share of that type of development needed within the planning district;

(5) The proposed development will favorably affect the ability of people to find adequate housing reasonably accessible to their employment;

(6) The proposed development will favorably affect the provision for city or county services and the burden of taxpayers in making provision therefor;

(7) The proposed development will efficiently use public or public-aided school, transportation or other facilities that are existing or that are to be furnished within the foreseeable future; and

(8) The proposed development should be approved in view of other considerations deemed necessary by the district council.

SECTION 37. (1) If any person or public agency is in doubt whether a proposed development project constitutes an activity of critical state concern, the person or public agency may request a determination from the commission on the question. Within 60 days after the date of the receipt by it of such a request, the commission, with the advice of the committee and of the district council for the planning district in which such activity is proposed, shall issue a binding letter of interpretation with respect to the proposed development project.

(2) Requests for determinations under this section shall be made to the commission in writing and in such form and contain such information as may be prescribed by the commission.

SECTION 38. (1) Any development project constituting an activity of critical state concern that is being carried out without a development permit issued under section 34 of this Act or in a manner contrary to the

conditions set out in a development permit issued therefor under section 34 of this Act is a public nuisance.

(2) Any development project that does not constitute an activity of critical state concern, that is being carried out within an area of critical state concern and that does not comply with the state-wide objectives and regulations approved by the commission for the area of critical state concern is a public nuisance.

SECTION 39. If the commission determines the existence of an alleged public nuisance under section 38 of this Act, it may:

(1) Investigate, hold hearings, make orders and take action that it deems appropriate under this Act, as soon as possible.

(2) For the purpose of investigating conditions relating to the alleged public nuisance, through its members or its duly authorized representatives enter at reasonable times upon any private or public property.

(3) Conduct public hearings in accordance with ORS chapter 183.

(4) Publish its findings and recommendations as they are formulated relative to the alleged public nuisance.

(5) Give notice of any order relating to a particular violation of its state-wide objectives and regulations, a particular violation of the terms or conditions of a development permit or a particular violation of the provisions of this Act by mailing notice to the person or public body conducting or proposing to conduct the development project affected in the manner provided by ORS chapter 183.

(6) Take appropriate action for the enforcement of orders promulgated as a result of any hearing. Any violation of an order of the commission under this section may be enjoined in civil abatement proceedings brought in the name of the State of Oregon. Proceedings thus brought by the commission shall set forth the dates of notice and hearing and the specific order of the commission, together with the facts giving rise to the violation.

SECTION 40. (1) Proceedings to abate alleged public nuisances under section 38 of this Act may be instituted at law or in equity, in the name of the State of Oregon upon relation of the Land Conservation and Development Commission.

(2) However, notwithstanding any other provisions of law, the commission, without the necessity of prior administrative proceedings or hearing and entry of an order, may institute a suit at law or in equity in the name of the State of Oregon to abate or restrain threatened or existing nuisances under section 38 of this Act, whenever such nuisances create an emergency that requires immediate action to protect the public health, safety or welfare. No temporary restraining order or temporary injunction or abatement order shall be granted unless the defendant is accorded an opportunity to be heard thereon at a time and place set by the court in an order directing the defendant to appear at such time and place, and to then and there show cause, if any he has, why a temporary restraining order or temporary injunction or abatement order should not be granted. The order to show cause, together with affidavits supporting the application for such temporary injunction or abatement order, shall be served on the defendant as a summons. The defendant may submit counteraffidavits at such time and place. The commission shall not be required to furnish any bond in such proceeding. Neither members of the commission nor the director or members of their staffs shall be liable for any damages the defendant may sustain by reason of an injunction or restraining order or abatement order issued after such hearing.

(3) Cases filed under this section shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

PART IV STATE-WIDE GUIDELINES, OBJECTIVES AND REGULATIONS

SECTION 41. All comprehensive plans and any zoning, subdivision and other ordinances and regulations adopted by a state agency, planning district, city, county or special district to carry out such plans shall be in conformity with the state-wide planning guidelines, and the state-wide objectives and regulations approved by the commission or the Legislative Assembly.

SECTION 42. (1) Not later than the expiration of one year following the effective date of this Act, the department shall prepare state-wide objectives and regulations to be applied by state agencies, district councils,

cities, counties and special districts in planning for, regulating, reviewing and passing upon land conservation and development proposals to be carried out within areas of critical state concern designated in section 31 of this Act. Within such period the department shall also prepare state-wide objectives and regulations to be applied by itself, state agencies, district councils, counties, cities and special districts in planning for, regulating, reviewing and passing upon applications for development permits for development projects constituting activities of critical state concern designated in section 32 of this Act.

(2) Upon completion of the preparation of the proposed state-wide objectives and regulations pursuant to subsection (1) of this section, the department shall submit them to the commission for approval.

SECTION 43. In preparing state-wide objectives and regulations for areas and activities of critical state concern designated under sections 31 and 32 of this Act, the department shall consider the comprehensive plans of state agencies, planning districts, cities, counties and special districts in the state in order to preserve functional and local aspects of land conservation and development.

SECTION 44. (1) Upon receipt of the proposed state-wide objectives and regulations prepared and submitted to it by the department pursuant to section 42 of this Act, the commission shall:

(a) Hold at least one public hearing within each district on the proposed state-wide planning objectives and regulations for areas and activities of critical state concern. The commission shall cause notice of the time and place of each such hearing to be published in a newspaper of general circulation within the district where the hearing is to be conducted not later than 30 days prior to the date of the hearing. The department shall supply a copy of its proposed state-wide objectives and regulations for areas and activities of critical state concern to the Governor, the committee, affected state agencies and special districts and to each city, county and district council upon request and without charge. The department shall provide copies of such proposed state-wide objectives and regula-

tions to other public agencies or persons upon request and payment of the cost of preparing the copies of the materials requested.

(b) Consider the recommendations and comments received from each of the public hearings conducted under paragraph (a) of this subsection, make any revisions in the proposed state-wide objectives and regulations for areas and activities of critical state concern that it considers necessary and approve the proposed objectives and regulations, as they may be revised by the commission.

(2) After the date of the approval by the commission of state-wide objectives and regulations for areas and activities of critical state concern designated in sections 31 and 32 of this Act, all planning, regulation, review and action upon land development proposals by the state, district councils, cities, counties or special districts shall be revised, if necessary, to comply with such objectives and regulations. The preparation of new comprehensive plans and any revision of any comprehensive plan of any special district, city, county, planning district or state agency shall comply with such objectives and regulations.

SECTION 45. Following the approval by the commission of state-wide objectives and regulations for areas and activities of critical state concern under section 44 of this Act, each district council shall review the comprehensive plans for land conservation and development within the planning district to assure that state-wide objectives and regulations approved by the commission for designated areas and activities of critical state concern within the planning district are implemented.

SECTION 46. (1) Not later than January 1, 1975, the department shall prepare state-wide planning guidelines for use by state agencies, cities, counties, district councils and special districts in preparing, adopting, revising and implementing existing and future comprehensive plans.

(2) Following the preparation of the proposed state-wide planning guidelines pursuant to subsection (1) of this section, the department shall submit the proposed state-wide planning guidelines for review and approval by the commission in the manner provided in section 44 of this Act for the approval of state-wide objectives and regulations for areas and activities of critical state concern.

SECTION 47. Following the approval by the commission of state-wide planning guidelines, each district council shall review all comprehensive plans for land conservation and development within the planning district, both those adopted and those being prepared. The district council shall advise the state agency, city, county or special district preparing the comprehensive plans whether or not the comprehensive plans are in conformity with the state-wide planning guidelines.

PART V COMPREHENSIVE PLANS

SECTION 48. Comprehensive plans and zoning, subdivision, and other ordinances and regulations adopted prior to the effective date of this Act shall remain in effect until revised, if necessary, under this Act.

SECTION 49. Prior to approval by the commission of its state-wide planning guidelines under section 46 of this Act, the goals listed in ORS 215.515 shall be used in the preparation, revision, adoption or implementation of any comprehensive plan.

SECTION 50. Any zoning, subdivision or other ordinance or regulation adopted by a state agency, district council, city, county or special district after the effective date of this Act shall be based upon its comprehensive plan and a finding by it that:

(1) The designation of land use zones is reasonably related to the effects of permitted land uses upon public facilities and other services, including but not limited to, transportation systems, public schools, health care facilities, fire and police facilities and the impact of such uses upon the state's finite natural resources.

(2) Agricultural zones relate to the need to conserve prime farm lands and provide for a blocking of agricultural lands in order to minimize conflicts between farm and nonfarm uses.

(3) Development of urban and nonfarm uses is conditioned upon the provision for the public facilities necessary to protect the public health, safety and welfare.

(4) Business, commercial and industrial zones relate to the needs of the area and that the location of such zones and the uses permitted therein

are based upon the effect of such land uses upon the adjacent lands and the community as a whole.

(5) Residential zones are located with respect to their respective requirements for public facilities and services and provide adequate regulations for varying densities of development.

(6) If substantial differences exist between adjacent land uses, transitional land uses are established between such conflicting land uses or that the development regulations for the more intensive land use provide adequate protection for adjacent property.

(7) Zoning regulations and ordinances do not prevent:

(a) The preservation of unique land uses and characteristics;

(b) The protection of life and property involved in the use of lands situated within flood plains; and

(c) Adequate housing for persons of low income within the area.

Section 51. ORS 227.240 is amended to read:

227.240. (1) For each district provided for by subsection (1) of ORS 227.230, regulations may be imposed designating the class of use that shall be excluded or subjected to special regulations and designating the uses for which buildings may not be erected or altered, or designating the class of use which only shall be permitted. These regulations shall be designed to [*promote the public health, safety and general welfare. The council shall give reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the direction of building development in accord with a well considered plan*] **comply with the considerations specified therefor in section 50 of this 1973 Act.**

(2) The regulations provided for by subsection (2) of ORS 227.230 shall be uniform for each class of buildings throughout each district. The regulations in one or more districts may differ from those in other districts. The regulations shall be designed to secure safety from fire and other dangers and to promote the public health and welfare, and to secure provision for adequate light, air and reasonable access. The council shall pay reasonable regard to the character of buildings erected before May 29, 1919, in each

district, the value of the land, and the use to which it may be put to the end that the regulations may promote public health, safety and welfare.

SECTION 52. Each city or county shall prepare and the city council or the county governing body shall adopt the comprehensive plans required by ORS 215.505 to 215.535 and 215.990 in accordance with section 49 of this Act for those plans adopted prior to the expiration of one year following the date the commission approves its state-wide planning guidelines under section 46 of this Act. Plans adopted by cities after the expiration of one year following the date of approval of such guidelines by the commission shall be designed to comply with such guidelines and any subsequent amendments thereto.

Section 53. ORS 215.055 is amended to read:

215.055. (1) [*The*] **Any comprehensive** plan [*and all legislation and regulations*] **and all zoning, subdivision or other ordinances and regulations** authorized by ORS 215.010 to 215.233 **and adopted prior to the expiration of one year following the date of the approval of state-wide planning guidelines under section 46 of this 1973 Act** shall be designed to promote the public health, safety and general welfare and shall be based on the following considerations, among others: The various characteristics of the various areas in the county, the suitability of the areas for particular land uses and improvements, the land uses and improvements in the areas, trends in land improvement, density of development, property values, the needs of economic enterprises in the future development of the areas, needed access to particular sites in the areas, natural resources of the county and prospective needs for development thereof, and the public need for healthful, safe, aesthetic surroundings and conditions.

(2) Any plan and all zoning, subdivision or other ordinances and regulations authorized by ORS 215.010 to 215.233 and adopted after the expiration of one year after the date of the approval of state-wide planning guidelines under section 46 of this 1973 Act shall be designed to comply with such state-wide planning guidelines and any subsequent revisions or amendments thereof.

(3) Any zoning, subdivisions or other ordinances or regulation authorized by ORS 215.010 to 215.233 and adopted after the effective date of this

1973 Act shall be based upon the considerations specified in section 50 of this 1973 Act.

[*(2)*] **(4)** In order to conserve natural resources of the state, any land use **plan or** zoning, **subdivision or other** ordinance adopted by a county shall take into consideration lands that are, can or should be utilized for sources or processing of mineral aggregates.

SECTION 54. (1) Following the approval by the commission of state-wide planning guidelines under section 46 of this Act, each district council shall review the comprehensive plans and all revisions thereof of state agencies, special districts, cities and counties within the planning district for compliance with state-wide planning guidelines and state-wide objectives and regulations approved by the commission.

(2) The district council shall approve comprehensive plans and revisions thereof that comply with the state-wide planning guidelines and state-wide objectives and regulations approved by the commission.

(3) Upon the expiration of one year after the date of the approval of state-wide planning guidelines and annually thereafter, each district council shall report to the commission on the status of comprehensive plans within each planning district. Each such report shall include:

(a) Copies of comprehensive plans reviewed by the district council.

(b) For those areas or jurisdiction within the planning district without comprehensive plans, a statement and review of the progress made toward compliance with the state-wide planning guidelines and the state-wide objectives and regulations.

SECTION 55. (1) Notwithstanding any other provision of law, after the expiration of one year after the date of the approval of the initial state-wide planning guidelines under section 46 of this Act, the Governor shall prescribe, may amend and shall thereafter administer comprehensive plans and zoning, subdivision or other ordinances and regulations for lands within the boundaries of a county, whether or not within the boundaries of a city that:

(a) Are not subject to ORS 390.640 or to a comprehensive plan and zoning, subdivision or other ordinances and regulations adopted pursuant

to ORS 215.010 to 215.233 and subsections (1) and (2) of ORS 215.990 or zoned pursuant to any other state law or city ordinance; or

(b) Are subject to a comprehensive plan or a zoning, subdivision or other ordinance or regulation, that does not comply with the state-wide planning guidelines or state-wide objectives and regulations approved under this Act and any subsequent revisions or amendments thereof.

(2) If the city or county shall have under consideration a comprehensive plan or zoning, subdivision or other ordinances or regulations for lands described in subsection (1) of this section, and shall have shown satisfactory progress toward the adoption of such comprehensive plan or such ordinances or regulations, the Governor may grant a reasonable extension of time after the date set in this section for completion of such plan or such ordinances or regulations.

(3) Any comprehensive plan or zoning, subdivision or other ordinance or regulation adopted by the Governor under subsection (1) of this section shall comply with the state-wide planning guidelines and state-wide objectives and regulations approved under this Act and all subsequent revisions or amendments thereof.

(4) The department shall cooperate with and assist the Governor in the preparation and administration of any comprehensive plan or zoning, subdivision or ordinances or regulations prescribed by him under subsection (1) of this section.

Section 56. ORS 215.510 is amended to read:

215.510. (1) Any comprehensive [*land use plans*] **plan for any city or county** prescribed or amended by the Governor pursuant to ORS 215.505 **or section 55 of this 1973 Act** shall be in accordance with the standards provided in ORS 215.515 and the notice and hearing requirements provided in ORS 215.060.

(2) Any zoning, **subdivision or other ordinances and** regulations **for any city or county** prescribed or amended by the Governor pursuant to ORS 215.505 **or section 55 of this 1973 Act** shall be in accordance with the standards provided in ORS 215.055 and the notice and hearing requirements provided in ORS 215.223.

(3) A comprehensive [*land use*] plan or zoning, **subdivision or other ordinance or** regulation **for any city or county** prescribed or amended by the Governor pursuant to ORS 215.505 **or section 55 of this 1973 Act** may be for any purpose provided in ORS 215.010 to 215.233 and subsections (1) and (2) of 215.990, except that the Governor may not prescribe building regulations. The Governor may, however, cause to be instituted an appropriate proceeding to enjoin the construction of buildings or performance of any other acts which would constitute a land use that does not conform to the applicable [*land use*] **comprehensive** plan or zoning, **subdivision or other ordinance or** regulation.

(4) Any hearings required by this section may be held by the Governor, or by a person designated by the Governor, and all such hearings shall be held in the county seat of the county **or in the city** in which said comprehensive [*land use*] plan or zoning, **subdivision or other ordinance or** regulation is to be prescribed.

Section 57. ORS 215.515 is amended to read:

215.515. (1) Comprehensive physical planning, **adopted by the Governor prior to the expiration of one year following the date of the approval of state-wide planning guidelines under section 46 of this 1973 Act,** should provide guidance for physical development within the state responsive to economic development, human resource development, natural resource development and regional and metropolitan area development. It should assist in attainment of the optimum living environment for the state's citizenry and assure sound housing, employment opportunities, educational fulfillment and sound health facilities. State plans should relate to intermediate and long-range growth objectives. The plans should set a pattern upon which state agencies and local government may base their programs and local area plans. Goals for comprehensive physical planning are:

[*(1)*] **(a)** To preserve the quality of the air [*and*], water **and land** resources of the state.

[*(2)*] **(b)** To conserve open space and protect natural and scenic resources.

[*(3)*] **(c)** To provide for the recreational needs of citizens of the state and visitors.

[*(4)*] **(d)** To conserve prime farm lands for the production of crops [*and*].

(e) To provide for an orderly and efficient transition from rural to urban land use.

[*(5)*] **(f)** To protect life and property in areas subject to floods, landslides and other natural disasters.

[*(6)*] **(g)** To provide and encourage a safe, convenient and economic transportation system including all modes of transportation: Air, water, rail, highway and mass transit, and recognizing differences in the social costs in the various modes of transportation.

[*(7)*] **(h)** To develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

[*(8)*] **(i)** To diversify and improve the economy of the state.

[*(9)*] **(j)** To ensure that the development of properties within the state is commensurate with the character and the physical limitations of the land.

(2) Comprehensive physical planning adopted by the Governor after the expiration of one year after the date of the approval of state-wide planning guidelines under section 46 of this 1973 Act shall be designed to comply with such state-wide planning guidelines and any subsequent revisions or amendments thereof.

Section 58. ORS 215.535 is amended to read:

215.535. In addition to the remedy prescribed in subsection (3) of ORS 215.510, the Governor may cause to be instituted any civil action or suit he considers appropriate to remedy violations of any comprehensive [*land use*] plan or zoning, **subdivision or other ordinance or** regulation prescribed by the Governor pursuant to ORS 215.505 **of section 55 of this 1973 Act**.

SECTION 59. Whenever the Governor prescribes a comprehensive plan or zoning, subdivision or other ordinances or regulations for lands described in subsection (1) of section 55 of this Act, the costs incurred by the Governor and the department in the preparation and administration of

such plan or ordinances or regulations shall be borne by the city or county for which the Governor has proposed such plan or ordinances or regulations. Upon presentation by the Governor to the governing body of the city or county of a certified, itemized statement of costs, the governing body shall order payment to the Governor out of any available funds. With respect to a city or county, if no payment is made by the governing body within 30 days thereafter, the Governor shall submit to the Secretary of State his certified, itemized statement of such costs and the Governor shall be reimbursed upon the order of the Secretary of State to the State Treasurer, from the city's or county's share of the state's cigarette and liquor revenues.

PART VI APPEALS

SECTION 60. (1) In the manner provided in sections 61 to 63 of this Act, the commission shall review upon:

(a) Petition by a district council, a comprehensive plan provision of a state agency, city, county or special district that the district council considers to be in conflict with approved state-wide planning guidelines or approved state-wide objectives or regulations.

(b) Petition by a district council, a land conservation and development action taken by a state agency, city, county or special district with respect to an area or activity of critical state concern that the district council considers to be in conflict with approved state-wide planning guidelines or approved state-wide objectives or regulations.

(c) Petition by a state agency, city, county or special district, any district council action that the state agency, city, county, or special district considers to be improperly taken or outside the scope of the district council's authority under this Act.

(d) Petition by any person or group of persons, a provision of an adopted comprehensive plan or an action taken by a district council.

(2) A petition filed with the commission pursuant to subsection (1) of this section must be filed not later than 60 days (excluding Saturdays and holidays) after the date of the final adoption or approval of the action or comprehensive plan upon which the petition is based.

SECTION 61. (1) All review proceedings conducted by the commission pursuant to section 60 of this Act shall be based on the admini-

strative record, if any, prepared with respect to the proceedings for the adoption or approval of the comprehensive plan provision or action that is the subject of the review proceeding.

(2) The commission shall adopt such rules, procedures and regulations for the conduct of review proceedings held pursuant to section 60 of this Act, in accordance with the provisions of ORS 183.310 to 183.500 for hearings and notice in contested cases.

(3) A district council, city, county, state agency, special district or any person or group of persons may intervene in and be made a party to any review proceeding conducted by the commission with the approval of the commission upon the request of the hearings officer appointed to conduct such proceeding or upon the approval by the hearings officer of a request by such agency, person or group of persons for intervention in the review proceeding.

SECTION 62. (1) In carrying out its duties under section 60 of this Act, the chairman of the commission shall assign each petition to be reviewed by the commission to a hearings officer who shall conduct the review proceeding.

(2) A hearings officer shall conduct a review proceeding in accordance with the rules, procedures and regulations adopted by the commission. Upon the conclusion of a hearing, the hearings officer shall promptly determine the matter, prepare a recommendation for commission action upon the matter and submit a copy of his recommendation to the commission and to each party to the proceeding.

(3) The commission shall review the recommendation of the hearings officer and the record of the proceeding and issue its order with respect to the review proceeding within 60 days following the date of the filing of the petition upon which such review proceeding is based. The commission may adopt, reject or amend the recommendation of the hearings officer in any matter.

(4) No order of the commission issued under subsection (3) of this section is valid unless all members of the commission have received the recommendation of the hearings officer in the matter and at least three members of the commission concur in its action in the matter.

(5) Any party to a review proceeding before the commission who is aggrieved by the order issued by the commission in the matter may appeal the order of the commission in the manner provided in ORS 183.480 to 183.500 for appeals from final orders in contested cases.

SECTION 63. (1) If, upon its review of the recommendation of a hearings officer and the record of the review proceeding prepared following a review proceeding before the commission, the commission is unable to reach a decision in the matter without further information or evidence not contained in the record of the proceeding, it may refer the matter back to the hearings officer and request that the additional information or evidence be acquired by him or that he correct any errors or deficiencies found by the commission to exist in his recommendation or record of the proceeding.

(2) In case of a referral of a matter back to the hearings officer pursuant to subsection (1) of this section, the 60-day period referred to in subsection (3) of section 62 of this Act is suspended during the period beginning on the date of the commission's referral to the hearings officer and ending on the date that the hearings officer submits the revised recommendation or record as requested by the commission.

PART VII LEGISLATIVE REVIEW

SECTION 64. (1) Prior to the expiration of 60 days after the date of the convening of the Fifty-eighth Legislative Assembly of the State of Oregon, the commission shall prepare and submit a report to the Legislative Assembly. Such report shall include:

(a) The modifications of and additions to areas or activities of critical state concern as recommended by the commission under section 33 of this Act.

(b) State-wide planning guidelines approved by the commission under section 46 of this Act.

(c) State-wide objectives and regulations for areas and activities of critical concern approved by the commission under section 44 of this Act.

(d) A summary of the orders issued by the commission following review proceedings conducted pursuant to section 60 of this Act; and

(e) A summary of the activities of the department, district councils, cities and counties in land conservation and development in the state.

(2) In addition to the contents of the report required under subsection (1) of this section, the commission may also submit proposed legislation that it considers necessary in furthering the purposes of this Act.

SECTION 65. The committee shall submit to the Legislative Assembly its comments and recommendations on the contents and provisions of the report required by section 64.

SECTION 66. (1) The report submitted by the commission to the Legislative Assembly pursuant to subsection (1) of section 64 of this Act shall be considered approved by the Legislative Assembly upon:

(a) The passage by both Houses of the Legislative Assembly of a joint resolution approving the report; or

(b) The expiration of 90 days after the date of the submission of the report to the Legislative Assembly, or the date of the adjournment of such legislative session, whichever occurs first.

(2) The Legislative Assembly may amend or revise the contents of the report or may refer the report back to the commission for further study with a statement of the provisions of the report that it finds unsuitable, accompanied by the reasons for each such finding, and its suggestions for the amendment or revision by the commission of the report.

(3) Upon the date of the completion and publication by the commission of the revision of its report in conformity with the directions of the Legislative Assembly, the report shall be considered approved by the Legislative Assembly under this section.

(4) The committee shall determine whether or not the report, if revised by the commission under subsection (2) of this section, is in conformity with the directions of the Legislative Assembly.

SECTION 67. (1) Following the approval under section 66 of this Act by the Legislative Assembly of the report, the commission may revise the state-wide planning guidelines and its state-wide objectives and regulations for areas and activities of critical state concern in the manner provided in sections 44 and 46 of this Act for the initial adoption of such guidelines, objectives and regulations.

(2) Any revision or amendment approved by the commission under subsection (1) of this section shall be submitted to the next following regular session of the Legislative Assembly for final approval.

(3) Any action that is taken by any agency of this state, the commission, a district council, a city or county of this state in reliance upon a state-wide planning guideline or a state-wide objective or regulation or any amendment thereof that has been approved by the commission shall not be invalidated by subsequent refusal by the Legislative Assembly to approve or by any subsequent amendment thereof by the Legislative Assembly.

SECTION 68. During each biennium following July 1, 1975, the commission shall review its activities under this Act and submit a report to the Legislative Assembly. Such report shall include:

(1) Modifications of and additions to designations of areas or activities of critical state concern in the state;

(2) Modifications of and additions to state-wide objectives and regulations for areas and activities of critical state concern;

(3) Modifications of and additions to state-wide planning guidelines;

(4) A summary of the orders issued under section 60 of this Act since the date of the previous report by the commission to the Legislative Assembly; and

(5) A summary of the activities of the department, district councils, cities and counties in land conservation and development in the state since the date of the previous report by the commission to the Legislative Assembly.

SECTION 69. The committee shall submit to each legislative session its comments and recommendations on the contents and provisions of each report submitted by the commission under section 68 of this Act.

SECTION 70. Each report submitted to the Legislative Assembly pursuant to section 68 of this Act shall be considered approved in the same manner and under the same conditions provided for the approval of the report described in section 66 of this Act.

PART VIII MISCELLANEOUS

SECTION 71. The part designations and unit captions used in this Act are provided only for the convenience of locating provisions of this Act, and are not part of the statutory law of this state.

SECTION 72. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on July 1, 1973.

Mr. ATIYEH. In 1969 Oregon became an early State to say by law, zoning and land use is a State responsibility because it is a statewide problem. It required all counties to draft land use plans and zoning ordinances and authorized the State government to prescribe and administer comprehensive plans and regulations for these counties which did not meet the deadline.

Unlike so many other coastal States, the public owns and has access to every inch of Oregon's seashore. We have coastal zoning laws and our parks and wilderness are protected. Our Department of Environmental Quality does not hesitate to colse down a polluting factory. I have not had adequate time to study completely the total impact upon our State that 268 would have. However, I have made some observations which I would like to express.

As long as the National Land Use Policy Act maintains the role of the Federal Government as one of assuring that the individual States act in accordance with individual State needs, which vary greatly, then this is good. But if Congress goes beyond procedural to policy guidelines, one would begin to worry about future Federal intervention. We must already comply with various Federal agency rules and regulations before many projects can be accomplished. Under S. 268 our policies would again be reviewed by numerous Federal agencies. Everytime another lawyer of the Government is involved, things become time consuming and produce results which are counterproductive oftentimes. Where Federal funds are involved one gets the feeling that big brother is watching over us, this allows the Federal Government to get its foot in the door and increase its participation.

One cannot fault the Federal Government which operates as a partner in planning with the States. The grant in aid may be a good provision with States that need help in setting up related departments, but this brings up the old subject of the problem regarding States which have done nothing, while those that have receive little.

I would like to digress and talk about the sanctions in the bill and the questions that have arisen. I would like to suggest another possibility, which would be incentives. Instead of taking away funds from States, in effect, give them bonuses if they do the job, which, to me, is a preferred way of going about it. I realize that many States are slow in forming legislation requiring sound planning procedures, but I think we have seen an increasing interest around the country. Some States are using legal means to regulate planning. Because we are environmental oriented, Oregon has many active groups which help keep an eye around the State. It is a trend that can't be stopped and should not be slowed.

I agree with Senate Bill 268, as to what it is trying to accomplish, my main worry is inclusion of another layer of Government in the process. That role should be realistically analyzed before jumping on the land use planning bandwagon.

I have said really not much that hasn't been said before and much better. I think, however, it is important that I do stress two things that concern me.

First, is the time lag, which has been discussed up to 5 years, if I understand it correctly. My Governor stressed that this morning. By way of illustration, my own county, Washington County, in

Oregon, started to institute zoning. At that point in time there was some question about the constitutionality of the law we passed. So we had to wait 2 more years before the next legislative session to correct that. Within 2 years there was a dramatic change within my own county and the area in which I live. Just this session, in the legislature, where I live was called a Sodom and Gomorrah. I didn't take that too kindly.

The second is a commitment to a continued flow of funds and here again we find that within States when something is started the States, or small segments of government, wait for that Federal fund before they act. I would say to you that whatever funds you commit, that we be assured of a continued flow of those funds. Certainly I am aware of—I guess the kindest thing I can say is the congressional fight that is going on in that matter. But it is important that it be started and be continued. Therefore, the program that the Federal Government and the States wish will continue.

Oregon, for example, in the matter of sewerage bonds has been kept waiting for Federal funds for some years, prior to the problem we have now. So we passed a law within the State legislature allowing us to bond for the sewerage bonds, up to now $109 milion within the State of Oregon, so we would not be dependent upon the irregular flow of Federal funds.

That concludes my statement and I would look forward to questions.

Senator HASKELL. Thank you; do you now have to run for a plane or can you wait?

Mr. ATIYEH. No, I missed it; if I had done this 15 minutes ago I could have caught it.

Senator HASKELL. That is too bad; we apologize for your delay.

The next gentleman is Representative Gerald Horton, Georgia House of Representatives.

STATEMENT OF GERALD HORTON, GEORGIA HOUSE OF REPRESENTATIVES

Mr. HORTON. Thank you, I am Gerald Talmadge Horton, speaking on behalf of the National Legislative Conference today. Also, I am vice chairman of the State planning of community affairs committee. That post was held by Senator Nunn, so I have now stepped into his shoes and he stepped into others.

It is a great pleasure first to mention the National Legislative Conference's policy statement which I would like to read into the record:

> The Intergovernmental Relations Committee of the National Legislative Conference believes that the planning process should involve, in appropriate degree and with regard to applicable lands, all levels of government and cooperation among separate agencies within the same level of government.
>
> The committee recommends that Federal legislation should set broad national policy and should 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.
>
> The committee further urges that each State should:
>
> First, set policy and establish guidelines for land use within its borders, with particular emphasis on environmental considerations and balanced usage.

Second, direct the implementation of comprehensive local land-use plans in conformance with such guidelines.

Third, reserve for itself direct determination of land use only in instances which it deems of impact or importance beyond the scope of a single locality to determine.

Fourth, set policy with regard to the creation of new communities.

I think that in the field of land use, that the States have taken a bold and decisive step. One need only mention Zimmerman and others in the State of Washington, Richard Lamb in Colorado, as people who at this moment are introducing and fighting for legislation in their houses and senates. In Vermont, Florida, and Hawaii, we see States that have already taken action in this field. In North Carolina, Utah, and Georgia, this year there are bills before both houses and senates to provide for a balanced land-use policy for those States. So that you are really in a reverse role in many ways in that instead of the State governments coming to you for guidance, we are offering you what is becoming the body of wisdom and political knowledge of the pluses and minuses of this game.

I personally have found over the last 6 months, as chairman of our State planning and community affairs subcommittee on local zoning, that there are two great political issues in our country. I am not sure what the first one is. It may be where you live. Either busing or property taxes or environmental concerns, but the second one is local zoning and land use. Every person in our country feels threatened by the breakdown of these systems. Nobody really trusts the local officials. The local officials wish they didn't have to make the decision. The developer is sick and tired of being called the enemy when he feels he is working within the law. So we are finding in State after State a desire—not only a desire but demand by the public that we do something about the way we are using our land. We are seeing in each of these legislatures an approach to this problem.

In the State of Georgia we have beautiful Golden Isles; my great, great-grandfather arrived on those islands and we were the first people to live on Jaeckel Island and the first people to plant cotton there. Those islands were threatened a few years ago when we passed the Georgian Marshlands Act, and then the Federal Government passed the Coastal Zone Management Act in which we were delighted to see that the National Legislature would say there were issues of national policy and land-use concern such as our coast. We have been very sorry, Senator, that the Coastal Zone Management Act has not been funded, and we wish you to allow the States that are trying to protect your coast and our coast, that great natural resource, to have the benefit of that money.

The land use question will obviously rise and we will hear it time and time again as we have in the State legislature—the question of property taxes. When one begins to discuss land, the taxation of that land according to its use will change drastically.

I should urge that you at the national level and we at the State level not be deterred from our purpose by this argument. We will not be able to decide what fair and equitable taxation should be for property until we decide what we want the lands to be used for. So, in effect, in our State particularly, where we talk about a farm tax now, we first

must decide what kind of lands we want to keep in farming. So I hope that side issue will not detract from it.

As to sanctions, the best canction of all is the one that if we do not do what we need to do we will lose all that we have. The second thing is the sanctions within the bill are appropriate only in a peripheral fashion. It is almost like my not allowing my child to go to a movie because he didn't do his history homework. There is no relationship between the sanctions and the activity not carried out.

On the other hand, I feel some States may have to have the threat of to cut off of the Federal funds to carry forth their programs.

As to Senator Buckley's earlier question of dividing up the bill, may I suggest to you that we found at the local and State level one of our problems of handling critical areas in land use is handling separate classes of land use such as the coast and then the rivers and then we have not set up an overall planning system for the total land within a State.

I would urge you to consider very carefully keeping the system, the process of total land use planning, rather than dividing it into a series of acts relating to specific problems or environmental concerns. In fact, I think this act is the product of having had the Scenic Rivers Act, the Coastal Management Act, and other acts proving the point that we need a system or process, an intergovernmental process that would allow us to plan of all our land from that great song which you all remember, "From New York Island to California, this land is your land and my land," and that is the land I hope we will address in the fashion of a bill that will allow us intergovernmentally to have a process that will deal with all of it. As to the question of procedure and broad policy statements, I am much concerned that the bill does not in fact carry a broad policy statement.

I would like in closing to read the first statement in the Georgia Act. It says:

> The general assembly of Georgia hereby defines and declares that there are areas in this State that are of critical concern to all citizens of the State because of the substantial public investment which created them or their character as irreplaceable national resources.

I would suggest there are also areas in this State of national concern and perhaps, within the act, that it should specify certain areas of being of national concern rather than just State and local concern.

Thank you.

Senator HASKELL. Thank you for a very thoughtful statement. I hate to do this to you again, but that one long bell means I have to go over and vote, and I can't do justice to my friend Dick Lamm from Colorado or Representative Mastin from Michigan, so we are going to have to recess. I will try to be back in 5 minutes.

Representative Lamm, do you have to leave at a given time?

Mr. LAMM. No, sir.

Senator HASKELL. So if it is all right with you I will ask Representative Mastin to continue when I come back.

[Recess.]

Senator HASKELL. The committee will be in order.

Representative Mastin, you may proceed. Again we apologize for breaking this up so, but I am afraid it is a little outside of my control. I appreciate your patience.

STATEMENT OF PHILIP MASTIN, MICHIGAN HOUSE OF REPRESENTATIVES

Mr. MASTIN. Thank you, Senator Haskell, and I apologize to you and the committee for having to leave early and I certainly appreciate your consideration in putting me on now.

Mr. Chairman and members of the Senate committee, I am State Representative Philip Mastin of Michigan, chairman of the Michigan House of Representatives Committee on Towns and Counties.

Let me begin my testimony by extending my sincerest congratulations to each member of this committee for your effort in attempting to solve one of the most serious problems we face as a society: The misuse and irresponsible development of our most irreplaceable heritage, our land.

In August of 1972, I introduced a land-use bill, Sub. H.B. 6256, in the Michigan Legislature and held a series of public hearings in both urban and rural areas. Much of the testimony from those hearings was very enlightening and I want to share it with you.

First, we learned that local government is simply not performing an adequate planning function in our State. Although planning and zoning decisions have long been the domain of local units of government, we found that only 22 of Michigan's 83 counties maintained a planning body and that fewer than 50 percent of Michigan's over 1,600 cities and townships provide any type of planning function. The inescapable facts are that in 61 of our countries and most of our townships, representing the vast majority of our land area, local zoning decisions are based on a complete absence of planning.

Unfortunately, where planning is absent, zoning decisions are often made in an intellectual vacuum filled often by mere expediency or political and economic pressure for development. Many times our townships find themselves powerless to halt or control aggressive development. And so we witness, as in Michigan's Grand Traverse area, the destruction of cherry orchards, unique in our Nation and completely irreplaceable, so that land overlooking Lake Michigan may be subdivided for residential development and profit.

My committee staff is currently researching reports which indicate that in one of Michigan's large urban areas, current plans call for extending water and sewerage treatment services into undeveloped areas representing the equivalent of 26 to 38 townships or over 1,000 square miles of land area by 1990. These expensive improvements are declared to be necessary to meet the region's 1990 population requirements. Our own independent study indicates that existing water and sewer facilities may already be adequate to service this region's 1990 population. Our committee report on this region will be prepared within the next several weeks. I hope you will allow me to share it with you at that time.

The problem here is obviously not a lack of planning but of poor, uncoordinated planning. Unfortunately, when such plans are made public they are used by utility companies to determine future areas of expansion and utility rate increases are then demanded to meet the cost of such expansion.

I would point out that the people who pay the costs, through their utility payments and their taxes and sewer and water bills, are the

same people who will be living in a semideserted city or inner suburban communities in 1990 as their more affluent neighbors move out into newly developed land areas.

Michigan faces the loss of ever increasing segments of her agricultural industry. Two major reasons exist for this problem: taxation policies which assess the land on its potential use rather than its agricultural use and zoning decisions which allow development of our best farmland. I am hopeful that legislation allowing use value assessment will help make farming economically feasible once again. In addition, a strong need exists for a land use policy which protects our best farmland from development.

My home county, Oakland County, was a decade ago one of the finest agricultural areas in Michigan. Today, approximately 60 farms remain operational. The remainder have surrendered to the developer. I have heard testimony from our remaining farmers. They want to remain in agriculture and they want to remain in Oakland County. They tell me they, too, will be forced out within 3 years unless they receive help. Exhibits attached to my testimony explain this problem in greater detail.

Motor News (AAA) February 1971, carried an article pointing out the threat to Michigan's agricultural land: "Michigan food production will be threatened and prime farmland will be a thing of the past within the next 30 years, predicts the Michigan Department of Agriculture. For example, 22 southern Michigan counties produce two-thirds of our present farm output. But all are directly in the path of projected population sprawl for the year 2000. Productive land, fast disappearing, is irreplaceable and one of Michigan's most valuable resources. 'Unless we plan now and take steps to preserve our capacity to produce food and fiber, we may be faced with the most serious environmental quality problem we have ever known,' says B. Dale Ball, director of the Michigan Department of Agriculture. Something for all Michiganians to think about, seriously."

Occasionally, during our hearings we heard the term "State land grab" used to describe our effort to develop a coordinated State land use policy. It is undoubtedly a term that members of this committee will also become acquainted with.

I believe that we in government can blunt a good deal of this type of reaction if we structure land use legislation which is implemented through those units of government closest to the people: Their cities, their townships and counties. Land use legislation should require local and regional hearings at which the people may freely express themselves; it should offer positive incentives as well as imposing sanctions to State and local government to develop their own planning and zoning capabilities within broad guidelines as established under Federal law.

It is useless to expect a small township, paying its supervisor $600 per year, to afford an expensive planning consultant. Any incentive plan should therefore include financial assistance for impoverished local units.

Today, virtually all local zoning decisions are based on economic considerations. Our courts have historically refused to consider other than economics when determining zoning appeal brought before them. I strongly believe modern day planning and zoning considerations must include both social and environmental impact as well.

Equally strong consideration must be given by legislative bodies to taxation policies which diminish the economic incentive of zoning policies. Today, in their quest for ever increasing tax base, many communities will accept any development regardless of its economic, environmental, or social impact on surrounding communities. A taxation policy aimed at regional sharing of new tax base, particularly commercial and industrial tax base, has, in my opinion, great merit in reducing the economic factor behind most zoning decision.

Just as an aside, that kind of legislation has been adopted in Minnesota, the Twin Cities area. As I understand, it is working out well.

Federal legislation which accomplishes those objectives, minimizing economic considerations in zoning decisions, strengthening the incentive of State and local government to establish coordinated land use policies, achieving implementation through local governmental units wherever possible and offering a realistic opportunity for public expression on local, regional, and State planning decisions, such legislation can offer to our future generations the best gift we have to give; a world whose land resources have not been ravished but protected, where wilderness areas, agricultural areas, and open shoreline remain to be enjoyed and where open land in urban areas has been preserved.

Senator Jackson's bill will help accomplish many of these objectives. I am strongly supportive of this legislation and will do all I can to help this distinguished committee effect its passage.

Thank you, Mr. Chairman and members.

[The complete statement of Mr. Mastin follows:]

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Unfortunately, where planning is absent, zoning decisions are often made in an intellectual vacuum filled often by mere expediency or political and economic pressure for development. Many times our townships find themselves powerless to halt or control aggressive development. And so we witness, as in Michigan's Grand Traverse area, the destruction of cherry orchards, unique in our nation and completely irreplaceable, so that land overlooking Lake Michigan may be subdivided for residential development and profit.

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Thank you, Mr. Chairman and members.

	Population			
	1970	1990	Percent	Difference
Michigan	8,875,083	10,499,138	11.8	1,624,100
SMSA counties	6,948,114	8,254,758	11.9	1,306,644
Non-SMSA counties	1,926,969	2,244,380	11.6	317,411
Detroit SMSA	4,199,931	4,903,063	11.7	703,132

Increase in SMSA Counties (number)	1,306,044
Increase in SMSA Counties of whole (percent)	81
Increase in non-SMST Counties of whole (percent)	19
Increase in Detroit SMSA of whole (percent)	43

Michigan Report

State land planning proposal to go before the public

The House Taxation Subcommittee on Assessment Practices will hold four hearings in August on a bill to create a state land planning agency and establish a tax structure aimed at preserving open space and farm land.

The hearings will be held:

August 23 at 2 p.m. in the Middle School, Miland;

August 24, 2 p.m. in the Lecture Theater, Delta College, University Center (near Saginaw);

August 29 at 2 p.m. in the Leroy Township Community Building, Joppa (near Battle Creek); and

August 30 at 2:30 p.m. in the Commissioners' Auditorium, Oakland County Service Center, Pontiac.

The subject of the hearing is a draft substitute for HB 6256, which also provides for development of short-and long-range land development plans by the state land planning agency. The bill also gives the state agency, which would be located in the Executive Office broad powers in designating districts of critical state concern, developments of state and regional benefit and large-scale developments. These designations would have to be approved by an 11-member state land planning commission to be appointed by the governor.

The state agency would be authorized to establish regional planning divisions. The governor could designate a regional advisory committee for regions created by the agency.

Areas designated by the agency as "districts of critical state concern." These would be areas having a significant impact on major public facilities or investments, or historical, natural, agricultural, horticultural or environmental resources of regional or statewide important, or the proposed site of a new community designated in a state land development plan.

In such districts, the power of a local unit of government to grant development permission would be subject to agency rules. If the local unit does not submit satisfactory development regulations of its own, the state agency would adopt regulations for it. The agency would also have the power to appoint a land development agency for districts or parts of districts not governed by local zoning ordinances.

The bill also provides that a "development of state or regional benefit" would have to be approved by a local zoning board, regardless of local ordinance, if the project is truly beneficial and the probable net benefit exceeds the probable net detriment as set forth in standards written into the bill. Included in this category would be developments by another governmental agency, developments for charitable, religious or educational purposes, developments serving substantial

numbers of non-residents of the community, developments by public utilities, and developments specified by the state agency and receiving state or federal aid.

The bill also required a special development permit for "large-scale developments" within jurisdictions having a zoning ordinance or for which the state agency has appointed a zoning board. A large-scale development is one the agency judges will present issues of state or regional significance because of its size of the magnitude of its effect on the environment.

In order to protect and preserve open areas, farm and agricultural land and timber land, the bill provides for land owners to apply for special current use assessments for a 10-year classification period. Open space land would include areas that conserve natural or scenic resources, protect streams or water supplies, promote conservation of soils, wetlands, beaches or tidal marshes, enhance recreational opportunities, preserve historic sites, or retain in its natural state a tract of land of not less than five acres, in an urban area and open to the public.

Eligible lands would have to be certified by the state, local or regional planning agency, or certified by the county equalization director that the land has been used as open space, farm or timber land for three of the preceding five years.

Land withdrawn from its classification before the 10 years are up would be subject to a rollback tax. Penalties would be added if the land is used for another purpose or notice of withdrawal is not given.

REPRESENTATIVE DIVELY, SPEAKING FOR YOUTH CONFERENCE, URGES DECRIMINALIZATION OF DRUG USE

The prime sponsor of the Age of Majority legislation in Michigan urged Wednesday the National Republican platform committee to recommend that personal use of all drugs be decriminalized. Rep. Michael A. Dively (R-Traverse City) told committee members in Miami Beach, Florida that all drug advertising should be banned from all media except professional journals because of their influence in encouraging drug use. He also said medical treatment funds should be increased.

Speaking as chairman of the Follow-up Committee of the White House Conference on Youth, Mr. Dively said a National Youth Foundation should be established to increase youth involvement in national decision-making. The recommendation, part of a series of proposals from the conference, indicated the Foundation would obtain and distribute youth opinions to national leaders.

Other proposals called for other states to follow Michigan and a handful of others and lower the age of majority to 18, increased funds for job counseling and training for high school and college students, and the establishment of a national foundation to assist service-learning programs in the country that give academic credit for community service.

[From the Petoskey News-Review, Aug. 24, 1972]

CHARLEVOIX ASKS HEARING ON FARM LAND TAX RELIEF

(By Fran Martin)

CHARLEVOIX.—William Mercer, director of the Charlevoix County Planning Department, and William D. Taylor of East Jordan, chairman of the Charlevoix County Board of Commissioners, have requested hearings in northern Michigan on a proposed bill that would create a state land use or land development commission and establish a tax structure that would make possible the preservation of open space and farm land.

The request was made after it was learned that State Rep. Philip Mastin (R-Hazel Park), chairman of the House Taxation Subcommittee on Assessment practices and sponsor of the bill under consideration (Substitute House Bill 6256), had planned a series of hearings in southern and central Michigan as far north as Saginaw.

The land use commission it would create would inventory and designate areas of the state of critical environmental concern, areas impacted by key facilities, such as power plants and highways, and areas of development and land use of regional benefit.

"The commission would have the duties of developing ways to exercise state control over the use of land within such areas, assuring that local regulations do not restrict or prevent development and land use which would be of regional benefit, and developing policies which would influence the location of new com-

munities and the use of land around such communities," Mastin said in explaining the proposed bill.

"The proposal would also develop that type of tax structure that would allow and encourage the preservation of open land and farm land.

"This is imperative if we are to preserve what little of this precious resource we have left in urban-rural fringe areas. Land is under tremendous pressure for development. This legislation would be one way to decrease that pressure," Mastin continued.

The Mastin Bill would seek to preserve and protect land which conserves or enhances natural or scenic resources; protects streams or water supplies; promotes the conservation of soils, wetlands, beaches or tidal marshes; enhances the value to the public of adjoining or abutting parks, forest wildlife preserves, forests, nature reservations or sanctuaries or other open space; enhances recreational opportunities; preserves historical sites, or retains in its natural state a tract of land not less than five acres located in an urban area and open to public use.

Under the proposed bill, the landowner could apply for a special "use value" assessment on his property. In order to obtain this special assessment, the land would have to be either certified by a local or regional planning agency that it is zoned or part of a land use for open space, farmland or timberland or certified by a county equalization director that it has been used as open space land, farmland or timberland for three of the preceding five years.

"I feel that this bill has tremendous potential in our fight to preserve our land resources", Mastin stated. "However, the subcommittee feels that the proposal should be thoroughly discussed and reviewed before any action is taken on it."

Because northern Michigan has land that would be affected by the bill, Mercer and Taylor, in behalf of their respective groups, have requested a similar hearing at some northern Michigan site for the benefit of area residents.

[From the Free Press, January 30, 1972]

Who Said Farming Is Charming?

OAKLAND FARMS SQUEEZED OUT BY SUBURBIA'S PROPERTY TAXES

(By George Cantor)

Papers were strewn all over the table in the century-old farm kitchen. Sales slips, receipts, bills. A small adding machine poked up through the clutter in one corner.

Bill Middleton and his younger brother, Tom, were figuring out their budget for the 280-acre dairy operation they run north of Oxford in Oakland County.

But no matter how they fed in the figures, the adding machine's answer was the same—Mr. Middleton, you're in trouble.

The Middletons, who purchased their acreage on Hurd Road in bucolic Brandon Township just four years ago, have been trapped by suburbia. Not in the form of subdivisions or hamburger stands or shopping malls. Not quite yet. That is still to come.

The suburbs arrived at the Middleton farm in the property tax assessment. And just like everyone else who tried to farm Oakland County in the last 25 years, the Middletons are being forced off the land by a relentlessly increasing tax assessment.

"The first year we owned the farm the tax bill was $2,200. Last year our assessment came to $6,000. We've appealed to the State Assessor but we haven't heard anything from him yet.

"We've sunk so much money into improvements and equipment that we really can't afford to get out. But if this keeps up we're not going to be able to stay in, either," Middleton said.

"We knew the suburbs were going to come this way, eventually," said Tom Middleton. "But we felt we had 20 years, at least. We never dreamed it would happen in four."

What happened to the Middletons is that several small parcels of land in the immediate area were sold to individuals looking for a "country style" homesite. They were willing to pay $1,200 an acre for the relatively small lots they bought.

Under the law, though, the much larger Middleton farm can be assessed at

the same value—even though it was purchased at $535 an acre in 1968 and there are no customers for a chunk of land that big.

The same situation is developing outside every major metropolitan area in southern Michigan. The Michigan Farm Bureau, which is urging creation of a tax shield for farmers by the Legislature, claims that 20 of the state's top 22 agricultural counties will be out of farming entirely by 1990; if the trend continues.

CLINTON COUNTY EQUALIZATION DEPARTMENT,
St. Johns, Mich., August 16, 1972.

Representative PHILIP O. MASTIN,
Lansing, Mich.

DEAR REP. MASTIN: Thank you for your invitation to attend the hearings on Substitute House Bill 6256. As of now no one from Clinton County will be present at said hearings. We feel, however, it important that some legislation of this type be enacted before our open areas are all scarred and defaced, and even wiped out.

Certainly there is a great need to separate lands kept in agriculture and others set aside for long periods of time from land held for speculation and development, as far as property taxes go. You could incorporate some of the features of House Bill 4100 of 1971 and come up with very useful legislation to preserve our agriculture and open spaces.

I, too, feel this Bill has tremendous potential and wish you success in your venture.

Sincerely,

LEON E. THELEN, *Director.*

Enclosure.

Land is going out of farm production in Michigan at the rate of 94 acres a day, according to the Governor's Land Use Commission Report. The land being withdrawn is prime agricultural acreage, too, because it was around these rich farms that the area's largest cities first sprang up a century ago.

Michigan is rapidly approaching the point, said one state agricultural expert, at which "remaining farmland will exist as islands in a sea of suburbanization."

W. L. Mainland, former Oakland county assessor and Milford Township supervisor, recalled that when he moved there in 1946, there were 40 operating farms in the township. There are about that many now in the entire county. Three remain in Milford Township.

"North of Eight Mile Road and west of Southfield Township, that was all farmland in those years," he said. "Then the tax bills started going up and the farmers would have to start selling off little bits at a time to raise the extra income.

"Then it reached the point where the price they could get for their land was simply far more than they could ever get out of farming. So they unloaded and the land went out of agriculture."

It is more than 40 miles from downtown Detroit out the Chrysler Freeway and Lapeer Road to the Middletons' Key-Bell Farm. City and suburban landscapes take up three-quarters of the ride.

North of Troy open space still remains. Most of it is being held by land developers, though, and has gone out of agricultural production.

The Middletons' father, Keith, has held on to his land near Lake Orion. Over the years, though he sliced his holding from 540 acres to 120 acres while his property tax remained at a steady $3,500.

Middleton's sons saw what was happening there and scouted the northernmost sections of Oakland County for a likely location. The acreage on rutted Hurd Road, just outside the crossroad village of Oakwood, seemed secure.

"It's hard to think of this as being suburban land," said Bill Middleton's wife, Jan. "We're so far out we can't even get home-delivered newspapers. When we get a big snow, the only way we can tell where the road lies is to drive between the treetops."

Her husband was Michigan's Young Farmer of the Year in 1970 and Tom Middleton is in contention for the award this year. The farm they run is a model of efficiency. What is more important, they are dedicated to the agricultural way of life.

"We're been told that if we get in trouble to start selling off 10-acre chunks of our land," said the younger Middleton. "But we're set up to operate at a 250-cow milking level.

"If we start selling off land parcels it would be like General Motors selling off land in its parking lots and not being able to employ as many people. It would be slow death for us.

"If we sold 10 acres we couldn't produce enough forage and silage on our farm for the number of cows we had. We'd be dependent on outside sources. We'd have to sell some cows. Then our income would drop and we'd have to sell off more land.

"It would be a vicious circle. We'd keep selling and boom, one day we'd be gone."

According to the Farm Bureau, property taxes average out to 20 percent of a farmer's net income, compared to five percent for the general population.

"It gets to the point where you have to borrow just to stay even," said Bill Middleton.

"You use the rising land prices as collateral and make a pretty solid path to the bank. Then at the end you sell out and come out even and look back over it all and say: 'Well, I lived.' And that's all you have."

Many states have decided that it is important to keep people like the Middletons on the land, that here are social issues at stake in their predicament that override the economic question of the most profitable use for the land.

Maryland was the first state to try and soften the inexorable economics of the situation. It gave farmers the shield of taxing their property only as agricultural land and not for potential use as suburban land.

Unfortunately, the law had only a slight effect. Many farms were simply bought by speculators who claimed the tax advantage and then took the land out of farming anyhow when it suited them.

New Jersey's version of the law added a "roll-back" clause. If a farmer sold his land he had to pay off the tax break he received over the previous three years. This is the law the Michigan Farm Bureau wants passed here. But even this may not be sufficient.

If there are enough speculative gains to be made in converting the land, developers will feel the three-year roll-back is a small price to pay.

"All this law can do is buy time," said Mainland. "It will enable legitimate farmers to stay on their land until the public demands more far-reaching land use laws."

In an attempt to spark this demand, the Farm Bureau is taking an environmental approach to the problem and stressing the ecological and aesthetic benefits of maintaining farms near suburban areas.

Robert E. Smith, the bureau's legislative counsel, ticked off four major areas in which he feels farmland is invaluable.

"It helps break down the megalopolis by dividing urban areas," he said. "It purifies and regenerates the water supply by storing precipitation. It purifies air by using carbon dioxide. It provides recreation—hunting, fruit-picking expenditions—for city dwellers.

"We can't consider farmland as simply wasteland or land waiting to be developed any longer. It must be considered a priceless natural resource."

But there is another side to the coin. If farmers are shielded from rising property taxes, other residents in the area will have to make up the difference on their tax bills. Farmers, who are eager to take the tax break, are less enthusiastic about other restrictions on their land.

Other states have found the three-year rollback payment, which is being proposed for Michigan, inadequate to keep out speculators. But the Middletons said they would balk at a longer rollback period.

"It would be awfully hard to come up with all that tax money at once if we wanted to sell," Tom Middleton said. "It could put us in the position of actually not being able to afford to sell."

Most land-use experts feel, however, that farmers will have to accept tighter restrictions in return for tax breaks to guarantee the land's continued agricultural use. California has pioneered such a system.

The farmer there must sign a 10-year agreement to keep his land in farming in return for a tax break. If he decides to break the pact, there is a nine-year waiting period before the land can go out of agriculture, with the tax rate getting increasingly higher every year.

"If a man is committed to farming he should be ready to accept some restrictions so he can stay in farming," Mainland said.

Or else in the very near future farming may be just a memory in Oakland County. And Wayne County. And Monroe County. And Washtenaw County. And Genesee County. And . . .

MOREY'S GOLF & COUNTRY CLUB,
Union Lake, Mich., August 27, 1972.

Hon. PHILLIP O. MASTIN,
Hazel Park, Mich.

MR. MASTIN: Your stand on tax subsidy and/or tax reduction for farmlands is most commendable and of the utmost importance. I have been voicing protest on this matter for several years and now in the private owned recreational areas have found a Goliath for our mutual cause.

Our plight is identical to farmland tariff. We can no longer bear the heavy taxation burden. My taxes were raised last year to $16,000.00 for a five month operation. At present, I am listed for sale because of this unjust assessment.

Others have preceded me and many others will be forced to follow and sell for development or housing. Then the cry for open land will be deafening or the citizens will demand green belts. Government will be forced to condemn properties for recreational use and spend millions of dollars for redevelopment and the property will be taken off tax rolls. Consequently, all taxes will have to be raised to offset this boondoggling.

Mr. Mastin we need your help. I am sure I can get every golf course to support your move. Please advise should we be in the position to help.

Respectfully,

ED MOREY.

[From the State Journal, Mar. 19, 1972]

DEVELOPERS ARE CARVING UP PARADISE

(By Jerry Moskal)

PETOSKEY.—Wide-open spaces of Michigan's north country are being carved into small pieces of "paradise" that some fear will turn the wilds into sprawling subdivisions. Developers have swarmed to the north to gobble up huge tracts of land, dice them up and then pocket comfortable profits.

The lures to land-hungry Americans are being dangled before Midwesterners, particularly in Michigan, Illinois, Indiana, Ohio and Wisconsin, since the northland has become a year-around vacation spot.

"We're going through in low key what Florida did in their land boom," said Dr. Ralph A. MacMullan of Lansing, director of the state Department of Natural Resources (DNR).

He said the time is running out for Michigan to act before all the land is gone. He said the legislature must pass a land-use law immediately or it may be too late.

"There's a tremendous desire on the part of people wanting to own a chunk of land," he said. "The lines of population increase have crossed over the lands that are available."

A DNR study shows 137,000 acres of Lower Peninsula land and 87,500 acres in the Upper Peninsula under development. Not listed on state records are thousands of acres of unplatted land.

E. M. Laitala of Hancock, a member of the state Natural Resources Commission, said the state's plat act is circumvented by forming lots of 10 acres or more.

The Governor's Commission on Land Use reported that developers can evade controls through land contract sales whereby actual title transfers do not take place until the contract is paid off years from now.

Buyers of 10-acre tracts have been sold on the idea that they can slice these up at least four ways, sell off three and keep one for themselves even though they are supposed to hold title for 10 years. DNR officials said this provision is not enforceable.

The commission also said that local units cannot even monitor developments where land contracts are used, let alone control them.

"This isn't because of our (DNR) people," Laitala maintained. "They knew this was coming. It's the Legislature. They don't want to do anything restrictive . . . until it's too late."

Often, the lands being subdivided are located in the middle of state-owned forests.

Michael D. Moore, DNR recreational and environmental forester, said that in some of the northern tier of 33 counties, as much as 15 per cent of the land has

been subdivided in the past five years, Crawford County being particularly hard hit.

"It's changing (the environment of the north)," he said. "It's going downhill. A lot of this is due to rapid transportation. More people. More leisure time. More money. What's going to happen when the factories go to a four-day week?"

Some fear has been expressed, he noted, that some city dwellers under a four-day week will move their families north and commute to their jobs in urban areas, spending only three nights there.

The DNR and the four surviving members of the department's five-man commission agree that Michigan urgently needs land-use laws.

"I think it's imperative that we manage the land as a natural resource," warned Hilfary F. Snell, a commissioner from Grand Rapids.

MacMullan, noting that Michigan's north country is within weekend trips for 80 million Americans, said that if land-use laws are not adopted the entire area will become 10-acre chunks within a decade. "We have a lot to offer," he added, "but we're squandering it and nobody really has any control."

At least 30 subdivisions have been listed with the state for the northern part of Michigan. Many are elaborate with clubhouses, pools, golf courses, air strips and $60,000 homes.

On uncontrolled developments, cabins, cottages, summer homes and other structures are going up. One state official observed that many of these retreats would be termed slums in the cities.

And as the crush of people pushes northward, wildlife and birds retreat. The areas available to them shrink.

Harry H. Whitely, a resource commissioner from Rogers City, said the influx of people to northern developments has spiraled in the past year or two. "There's a mass exodus out of the metropolitan area on the weekend," he explained." Along with that there's been a lot of development—land, homes.

"Suddenly, people are waking up to this fact that we've got a people problem—not enough room to hunt, fish."

Another commissioner, Carl T. Johnson of Cadillac, said many people are moving permanently into the north, including some small industry. Retirees are also finding the north attractive. Living costs there are still lower.

Roman H. Koenings of Washington, D.C., deputy director of the U.S. Interior Department's Bureau of Outdoor Recreation and a Michigan State forestry graduate, said the people rush to the north is pushing up costs for police, fire, health and school services.

He expressed concern about retirement communities springing up in the north because of the lack of adequate health facilities required by the elderly. "Maybe what they're going to have to have is a special ordinance saying these (retirement) places can't be occupied year-around."

Former Midwest regional director of the BOR, he said Michigan will have to act on land-use laws. He said the federal government can't come in and do land-use planning for the states."

Koenings pooh-poohed any attempt by Michigan to restrict its vacationland to its own residents. Michigan has a $1.5 million annual tourist business, he noted.

Lance Marston of Washington, the Interior Department's land-use planner, said Michigan is confronted with land development problems that also face Vermont and Colorado. "Up to this point," he added, "there has been pretty poor land-use planning in the states."

He said only Vermont and Hawaii now have statewide land-use laws, and eight other states are planning such legislation.

"Michigan's like Colorado, like Vermont, like Florida, New Mexico, Arizona—states where there are varied opportunities for recreation," he said.

[From the State Journal, Nov. 18, 1972]

DNR Chief Testifies—"North Land Raped"

(By Frank Mainville)

North country subdivision developers are carving up thousands of acres without concern for adequate roads and community facilities and are laying the foundation for the next big round of tax-reverted lands, A. Gene Gazlay testified Friday.

The director of the Department of Natural Resources told a hearing on the Omnibus Land Use and Development Bill that present patchwork legislation results in land use being guided by thousands of unrelated decisions by single-purpose state agencies, local governments and private developers.

Gazlay was one of 150 persons who attended the fourth of a series of nine scheduled hearings by the Governor's Special Commission on Land Use, Dr. William Taylor, executive director, conducted the session which was moved from the crowded Agriculture Conference Room in the Cass Building to the Law Building Auditorium.

Gazlay said some unscrupulous developers are raping the northern landscape by building roads on erodible soils, creating erosion of hillsides and siltation of streams, and bilking unsuspecting buyers who are unaware that much of the land cannot be economically developed.

"Each year more and more land is shifted from forestry and agriculture to more intensive uses such as subdivisions, highways, shopping centers, pipeline and powerline corridors and related developments," Gazlay noted. "Land policies and land tax policies in Michigan are intimately interwoven and need critical re-examination."

Gazlay said the DNR does not oppose all development but warned that development is critical and should be of the right kind, in the right place, in the proper time and should harmonize with land resources.

"Numerous shortcomings plague our existing land-use legislation," he explained. "Open space for parks, recreation and parking in new subdivisions and other housing areas is difficult to come by because there is no requirement to set aside such space in relation to dwelling units built."

"The current Subdivision Control Act is limited to plats of five or more lots and does not cover parcels of 10 acres or more," he added. "Furthermore, 10-acre parcels can be subdivided into four smaller lots again and again by new owners."

Mrs. Martha Gallagher of the Clare County Taxpayers Association assaulted the program as "another land grab." "We are told that local government will do the zoning but what people don't realize is that the state will dictate to the county what the federal government dictates to it," she declared.

Delmar Carr, Whie Oak Township farmer, urged that state zoning not be used to reduce the standards of townships which are more strict than the proposed new state zoning.

"I have farmed all my life as did my folks before me since they pioneered here in Ingham County in 1835," he explained. "I'd like to see good farmland in Ingham County protected by zoning because, when you put cement on prime agricultural land, as they did when Lansing was built, you are never going to bring it back."

John Kushing of Capitol Consultants of Lansing, called for better procedures to preserve the natural resources and uniform regulation by area-wide agencies based upon an optimum benefit-cost relation.

Mayor Lloyd Walker, of Greenville, speaking also for the Michigan Municipal League, noted that the plan does not delete home rule and that the League voted overwhelming for adoption of guidelines within which local governments could operate.

A member of the Michigan Air Pollution Control Commission, Walker also noted the problem of small cities which are expanded outside their peripheries—and jurisdiction—and later have to annex them as problem areas.

He also pointed to lack of planning around airports, foundaries and other facilities, noting that one small town foundry located adjacent to agricultural land since 1905, was threatened because developers wanted to build apartments within 200 feet of the factory cupola. Airport area development should also be limited in flight patterns.

Mr. MASTIN. If there are any questions, I would be glad to answer them, then I hope I can be speedily excused, Mr. Haskell.

Senator HASKELL. Would you like to answer them, I just have really two questions, because you do have to go and catch a plane, is that all right?

Mr. MASTIN. Yes, sir.

Senator HASKELL. Do you feel that there should be any statement of national land use policy in very broad generalities in the bill, or do you think the bill should be confined merely to asking States to go

through a procedure and then, once they go through the procedure, exert no further judgment?

Mr. MASTIN. Senator, I would hope that the Federal Government, with the interest it has in preserving Federal land, open lands that are not under Federal jurisdiction, would establish some general guidelines. I think it is the role of State government to establish guidelines but my own personal bias is in favor of allowing our local units to implement the land use policy in Michigan.

Frankly, I consider that politically that is the only practical way we are going to get a bill passed in this State.

Senator HASKELL. Thank you, Representative Mastin. The other point of difference between various people who testified is whether or not it is desirable that there be any sanctions, I don't have to explain that, you know what I am talking about. What is your opinion on that?

Mr. MASTIN. I see nothing wrong with the use of sanctions. If we mean what we are saying in this legislation, then I think the State government should be put on notice that if they do not, you know, expeditiously move in this area, that it is going to be costly to them. However, I think we should try to balance what might be considered a negative approach by offering some positive inducements, too.

I left out a few things out of my prepared testimony in the interest of time which I understand will be on the record anyway. But the fact of the matter is that most of our counties and most of our townships and smaller cities that did not have a planning function don't have it simply because they can't afford it. If something could be done to provide them, No. 1, with the guidelines and say, now we want to implement these guidelines and here is some assistance which the Federal and State government can offer you, financial assistance and the assistance of our planning expertise, I think most of our local units would respond favorably.

Senator HASKELL. Thank you very much, and good luck in catching your plane.

It is a great pleasure for me to have here an old friend of mine, and a gentleman with whom I served in the Colorado Legislature and a man that I have known over a great many years, who has given a lot of constructive thought and impetus to this whole area of land use and land use planning. For that reason I particularly welcome Representative Richard Lamm from the Colorado House of Representatives and look forward to hearing what you have to say.

STATEMENT OF RICHARD LAMM, COLORADO HOUSE OF REPRESENTATIVES

Mr. LAMM. Thank you, Senator Haskell. For the purpose of time I will be brief and extemporaneous.

I am here to support, of course, the Federal Senate Bill 268. I believe that national guidelines are definitely necessary. I point out, of course, as my colleagues have before me, this states vary dramatically in their political and environmental and social makeup. So I would recommend a strong but flexible approach to land use programs.

I would urge some stronger areas and in some areas I would urge changes.

No. 1, I think we need something more, not merely the requirement for machinery and the requirement for a State plan. I believe the States are far too limited in most instances in the land use area and I think time is very much at a premium.

In summary I would say there is a wide variety. In a few States they have made some substantial movement. But the common denominator of States at a time of increasing demand is the fact that most States are far behind in this area. So I would really like to see more than just the plan and the machinery. In other words the States should also be informed about some very broad and flexible but objective goals and guidelines. In other words States should be forced to look at more than a plan I don't believe the Federal Government should dictate what that plan ought to be or those guidelines or the criteria ought to be. There is an old Greek proverb: "To know all is to know half." I believe the States should be required to ask these questions and come up with some sort of plan and jell it with an objective and criteria.

So, I believe in that area the States should be really required without the Federal Government telling each State because they vary greatly what those criteria and regulations ought to be. But the States should have to come up with something more than just a plan.

Number two, with regard to the question of where that plan ought to be implemented, I think in the remarks from my colleague from Michigan, it is very politically safe to say that most of the implementation ought to be left at the local level. I believe that 90 percent of the land use decisions should be left at the local level. Where the gas station is, et cetera. But I would also point out that the State plan is not merely a collection of all the local prejudices. Unless there is a definite State agency and guidelines for those areas of critical concern, it is a partnership business, some of those decisions have to be made at the State level, although most of them are made at the local level and in those areas where the State interest does apply, they have to become preempted.

In other words, it might be only 3 to 5 percent of the total land use decision, when you are talking about placement of roads and parks and areas of critical State concern where international airports go you really can't have local veto or rely entirely on local government.

Local government is a fine institution and has to exist, but all too often we see they don't have the expertise or the funds or the staff and, very important, the prospective.

Adam Smith believed every man seeking his own self interest made up the public good. I think very often we think the local community seeking its own vested interest makes up a State plan, I contend that it does not. We have to make sure there is a broad citizen participation at every level.

In our Federal Clean Air Act there is a guideline that requires citizen input at every level. There again, dealing with procedure it would not be unreasonable to also make sure that the States, in terms of procedure, require broad citizen participation.

No. 4, there needs to be more money. I am very much in favor of the financial inclusion that was in the bill, S. 632, of last year. I believe it is very necessary and the current provisions are inadequate.

No. 5, sanction. A very difficult matter. I really believe, again in reviewing what has been done and what has not been done in so many

States, that we need more incentive. I hate to argue against sanctions, but I really believe perhaps some sanctions are necessary in this area.

I am particularly concerned, and this would weigh more importantly than anything I said previously, section 303(f) of this act which I believe in effect might be the most counterproductive section of any Federal bill:

> Any person having legal interest in land which the state has prohibited or restricted the full use or enjoyment thereof.

Let me talk a little bit about the Federal Highway Beautification Act, although it is not at issue here. In that area, attempting to get the States to take down billboards, the Federal Government inserted 131 (g) in that act which tied the States' hands and prohibited us from taking down billboards without paying compensation. Although 23 States previously had used the police power to take them down, this provision stands much more important than that act.

Any zoning that restricts the full use and enjoyment thereof. [All current zoning law in every State allows restrictions on property without paying compensation therefor.] This provision would tie the States' hands and set land-use planning back to before the first U.S. Supreme Court case in this area which was 1915 where the Supreme Court upheld the use of the zoning power.

In the Colorado plan that you just heard from Governor Love, we have provided plans to go into such things as scenic highways and broad plans to go into some of these other areas and we cannot have that kind of restriction.

Lastly, and in summary, I would say that again a very important part of the whole State plan, as I see it, is some flexibility in some areas like the highway trust plan. Again, not in testimony here, but we cannot make balanced transportation decisions at the State of Colorado. We make decisions on the availability of funds and we have a whole pocketful of money to spend on highways and not anywhere else.

That would conclude my testimony.

Senator HASKELL. Thank you very much, Representative Lamm. Senator Hansen has come in and you have covered the field extremely well, and your colleague from Georgia also has. I don't know whether Senator Hansen has any questions of these two gentlemen from the State Legislatures, one is a great friend of mine from Colorado and the other ditsinguished gentleman from Georgia, Representative Gerald Horton.

Senator HANSEN. Thank you very much, Mr. Chairman.

I am sorry, gentlemen, that I wasn't able to hear your presentations. I am attending to two matters this afternoon which are of extreme interest to me. This very important hearing on land use is one. The other is a hearing with the Atomic Energy Commission, El Paso Natural Gas Co., and a delegation from Wyoming who are concerned about the project, Wagon Wheel. It is for that last reason that I didn't get to hear your statements.

I understand, Mr. Lamm, that you are a State representative?

Mr. LAMM. Yes, sir.

Senator HANSEN. What is your basis to allow the removal of this reverse condemnation procedure which, I understand, you recommend be stricken from the bill?

Mr. LAMM. This is the most important thing that my testimony here could outline. The point is that the fifth amendment prohibits the State or Federal Government, or any locality from taking property without compensation. So, first of all, I think this amendment is really not necessary to protect property rights. The Constitution stands us in good guard against needless taking.

My point was, in effect, when we say the court has restricted the full use and enjoyment thereof. It would be "the State has prohibited or restricted the full use and enjoyment thereof," every zoning ordinance restricts the full use thereof. Governor Love's scenic highway plan, all of this in some way restricts property. The whole law is developed, and I researched it and pointed it out, that as long as zoning allows people one productive use of their land or even beyond that, many productive uses, but at least the State and localities have the power in some way to restrict the use of the land. I think if that phrase is left in it will not only not help land use planning, it will set it back 50 years.

Senator HANSEN. Can you contemplate any situation arising as a landowner, that could without this provision in the bill result in rather serious financial burdens to you?

Mr. LAMM. Yes; I really could. In 1915 the U.S. Supreme Court had a case before it, the first zoning case, where they wiped out a person who was trying to dig up clay on their property. The Supreme Court upheld Los Angeles' zoning on that even though it wiped out $600,000 which was quite a sum of money in those days.

I think one of the points of zoning is that you create value and in effect deplete value in zoning decisions. I think this has been established since 1915 and upheld, and it is important that cities, States and municipalities have this power. There is a lot of political power to make sure it is not exercised arbitrarily, but I think that power has to be there.

Mr. HORTON. I think we would find each of our State laws encourage our cities and counties to practice planning and zoning have a board of appeals and a board of adjustment procedure and the basis on which those appeals can be made and appeals from those boards to superior courts, so we have created in each of our States as a Nation, a vast body of legislation and case law with which we are familiar. Particularly those of us who are landowners who must make those appeals from time to time. I must agree very much that this language here might do great injury to that body of case law that we have been using now for over 56 years as a way to compensate people at such times as there is a taking.

Senator HANSEN. I recognize the fact that you have given considerable thought to this provision. I assume also that you have very definite opinions as to the impropriety of this particular provision in the bill.

Let me read it, I may.

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.

Is it your contention that this provision does not reflect some equity? Or is it your feeling that despite the right to petition the court, a land-

owner should be denied; that right in the interest of assuring the success of zoning ordinances?

Mr. HORTON. I will answer first to that, no, sir; in no instance do I suggest that a landowner shouldn't have the right to petition the courts, and in fact the State enabling acts provide that. I think the problem is that the words, as Dick pointed out to you, which do concern me also, are particularly the ones "full use and enjoyment theref."

I would submit, if it is possible, Mr. Chairman and Senator Hansen, I would like to offer some language that tracks most of the State legislation in this appeal process and use the same language that we find in most of our State enabling acts.

Senator HANSEN. How would you suggest modifying this particular provision so as to render it acceptable in your judgment?

Mr. HORTON. In an attempt to track the present State laws in this regard, and I can't do that sitting here, I found that out about amending laws from the floor, I am getting worse at it every year.

Senator HANSEN. If this provision were stricken, would it be possible in either one of your States for there to be a taking without due process of law?

Mr. HORTON. Not in my State.

Mr. LAMM. I think it is a fifth amndment right, the taking of property. I think I can speak for all 51 jurisdictions, presumptuously, perhaps. I do agree with Senator Hansen, as to the intent of the amendment because we don't want the State or local or any governmental entity to arbitrarily ursurp people's property. But it is restricting the full use thereof. Maybe we can give this some thought together. I would say where the State has prohibited or so restricted as to amount to a taking, some language like that, but I would again point out to you that the present language in almost every land use area, you restrict the full use thereof. I can't burn in my own backyard or raise pigs there. That restricts the full use thereof.

Senator HANSEN. I think my question there is would any right be taken from any individual if this secton were stricken?

Mr. HORTON. I don't think so. But the spirit of this section should be continued within the act, regardless.

Senator HANSEN. You say the spirit of this section would be continued in the act?

Mr. HORTON. Yes, sir; I would not suggest a complete removal of the section, but I would suggest it be modified to attract the State legislative acts at this time. But I would not suggest—Senator Hansen, I think the spirit of this section should be in the bill to assure that there is this recourse to the courts.

Senator HANSEN. Mr. Chairman, I appreciate the comments made by the distinguished legislator from the State of Georgia. In my mind this particular provision does not add any right or convey any freedom to anyone that he does not presently enjoy under the 5th and 14th amendments. It simply focuses attention on the fact that in this law we recognize the validity of the 5th and 14th amendments. We are saying to people that they may have the right, if they feel they have been damaged, to go to a court of competent jurisdiction and petition that court. I am rather surprised that our very distinguished witnesses this afternoon would find this language unacceptable in the bill. It is certainly nothing new at all for Congress to reiterate time and time again rights

that have been guaranteed in the Constitution and the amendments. I have listened very closely to a number of Senators when we were debating the equal rights amendment. There can be a very good case made that the rights would be guaranteed if indeed the 27th amendment does become law and does become part of our Constitution. It simply reiterates more specifically than has been said before, rights which many people believe already have been guaranteed by the Constitution and by the amendments and actions of the Congress. This doesn't guarantee that anyone is going to be given compensation. It simply recognizes in equity the right of any person to go to a court and to plead his case there.

I believe the distinguished representative from Georgia said the spirit of this section ought not to be taken from the bill. I would be very happy, along with the others on the committee, to consider other language if you have it to suggest. However, I hope we will not say to people that we are so strongly inclined to pass a land use planning bill that we are going to ride roughshod over lots of people. The kind of people I am thinking of, Mr. Chairman, are not the big corporations. They are not the big companies. I am thinking of little people that are going to be hurt. I hope we can assure them that if this language does indeed become law, it is going to contain safeguards in it such as access to the court and the right to petition the court. This will assure them that despite the overriding interest the public has in land use legislation which will have to be implemented through zoning ordinances, if a person feels he has been damaged badly, he shall not be denied the opportunity to go to court and address the court with his problem.

Mr. LAMM. Senator Hansen, as a member of one State legislature, I think we have seen time and time again where the Federal Government has done something, maybe not intending to do it, but in effect has tied our hands. In the area of highway beautification one little section was inserted like this. Every State had controlled billboards. Now we find we have to pay compensation. We were told by the Federal Government that we had a historic prerogative that was taken away from us by the Federal Government and it set highway beautification way back.

I think the problem I have in the thing is that this section is superfluous. It is not your legislation that stands guard, it is the Constitution that prohibits the taking of propery. What we are worrying about is something that gives extra legal rights and when you say restricting the use of, you are giving those extra rights.

Senator HANSEN. I would have to agree. If this conveys additional rights beyond that in the Constitution, I would like to have that spelled out specifically.

You speak about the legislation in the National Highway Beautification Act having been set back a number of years. That could very well be the case. However, I suggest a good case could be made that many of the actions of the courts today may seem not to serve the objectives of most of the people in the United States. I think we have seen criminals turned loose. There was no doubt at all about their guilt.

I happened to have been Governor of Wyoming when a young man murdered a babysitter. He killed her and then threw her in the Platte River. It wasn't too long before he was arrested and he told exactly

what had happened. He never denied that what he had said was true, but he was turned loose, simply because the Constitution says that within the Constitution and the amendments he was not apprised of all of his constitutional rights. He wasn't coerced to make any statement, he made the statement voluntarily.

Now, I don't suggest it could be contended that those of us who would hope that we could discourage crime in this country and would hope that we could assure most of the people in this country that their lives and property would not be subjected to the unlawful acts of others would be set back by this. This happens many, many times. But I don't find any inclination on the part of the courts to say we don't want to put up with that because it set law and order back, or in this case highway beautification. If we are to enjoy the freedom and privileges and opportunities we have as Americans, there are certain things we ought to recognize. It seems clear to me we are not conveying any extraordinary rights in the Constitution. We are simply saying what is in the Constitution shall be recognized in this bill.

Mr. LAMM. I agree wholeheartedly with that, and I made it in my statement originally. We are on the same side.

Senator HANSEN. Then I have no further questions.

Mr. LAMM. I only question your language and I would be happy to suggest some amending language.

Senator HANSEN. I would be happy to have you suggest that.

Senator HASKELL. Would the distinguished State legislators please convey to the committee some language which you feel would not take away constitutional rights and would not hamper State legislators or grant rights beyond what is now provided to people in the Constitution? I think Senator Hansen and Senator Fannin and I would all appreciate it.

Senator HANSEN. That is certainly right.

Senator HASKELL. Senator Fannin, do you have anything?

Senator FANNIN. No questions.

Senator HASKELL. Thank you very much indeed, gentlemen.

Now, I want to first extend the committee's apologies to Mr. Sillin, who was meant to be first this afternoon, but other people had to take airplanes and we ran a little late, and all I can say, Mr. Sillin, is I am afraid it is the squeaky wheel that gets the grease. I would appreciate it if you would come forward now.

STATEMENT OF LELAN F. SILLIN, CHAIRMAN AND PRESIDENT, NORTHEAST UTILITIES, HARTFORD, CONN.

Mr. SILLIN. Thank you very much, Mr. Chairman. No apologies, we do understand.

Mr. Chairman and members of the committee, my name is Lelan F. Sillin, Jr., I am chairman and president of Northeast Utilities of Hartford, Conn., whose subsidiary companies generate and deliver a major portion of the electric power supplied in Connecticut and western Massachusetts. I am accompanied by our counsel, Mr. C. D. Glenn, and Mr. C. O. Fisher, chief of environmental planning.

Senator HASKELL. Delighted to have you with us, gentlemen.

Mr. SILLIN. It is a great pleasure to appear before this distinguished committee today in response to your kind invitation that I comment

on Senate bill 268, the proposed Land Use Policy and Planning Assistance Act of 1973.

My long interest in land use planning stems from my concern as an individual with the haphazard character of growth that has occurred in our country, particularly since the end of World War II. This concern has been reinforced by my experience in the utility business, where attention must be focused on future projections of population growth, jobs, housing and related economic activities, all of which impact on land resources. There is a close but apparently poorly understood relationship between land use, economic growth, social needs and environmental protection, and the way in which my industry and other suppliers of essential public services interact with all of these considerations.

Encouraging more effective and comprehensive land use planning at the local, State and regional level, collecting and disseminating data on land use patterns, and developing wise land use plans and policies should be important objectives for the Nation.

I support the legislative purposes of S. 269. I believe that there is a new mood in the country toward urban growth and land use. Not only are people concerned with urban sprawl and deterioration of many of our central cities, they are concerned with the quality of community life, economic development and environmental enhancement, all issues inherent in the use of land.

More Americans do recognize the pressing needs of minorities and the poor for access to jobs, housing and health care. While there remains a longing for the past, a simpler time, there is concomitant realization that it can never be achieved. There is also frustration about the future because economic growth promises improvements in the standard of living, but the environmental tradeoffs required for these improvements are not always clearly known.

In coming to grips with the real trade-offs implicit in our environmental-economic dilemma, we must grasp for an understanding of the interactions of the environment and the economy, the economy and society, society and its quality. Until we have faced up to the necessity for such trade-offs; until we have learned to base our planning on substantive rather than fashionable considerations; we will be reacting rather than anticipating, patching up rather than building for the future.

The issues we face are extremely complex. They are complex not only because of their intrinsic intractability but because they relate to one another in unexpected and subtle ways. Until this notion of interrelatedness is grasped in our policy endeavors, we are apt to stumble into a worse situation than we have now.

The time is right for leadership which can balance wise economic growth and sound environmental policy. At the fulcrum of this scale, which weighs quantity and quality, is land use policy.

An effective State land use planning process and program would:

Promote an urgently needed examination of the complex interactions among economic development, social needs and environmental concerns.

Contribute to an improved public acceptance of the necessity for essential facilities, such as housing, highways, water supply facilities, mass transportation, sewage and solid waste processing facilities, and energy supply and delivery systems.

Encourage joint planning of the public and private sectors and thus improve the quality of decisionmaking.

Prompt a more rational discussion of economic and environmental issues and thus move toward a badly needed consensus of coherent national and State goals.

Hold down the costs of both public and private facilities, minimize environmental intrusion, and insure a wiser use of the Nation's land resources.

Enactment of S. 268 would provide a significant first step toward the objectives I have mentioned. More specifically it would:

Encourage the States to undertake the difficult task of devising comprehensive land use plans which would link planning to public and private decisionmaking.

Provide Federal funding assistance and a broad framework within which the States may begin to address the complex issues and the trade-offs inherent in reconciling economic, social, and environmental goals.

Focus State land use planning on critical environmental areas and key facilities and developments essential to the overall well-being of people.

With your permission, sirs, I would like to cite an example on pages 14 and 15 of the presentation. Where I said: "We are especially pleased that the bill helps establish a basis for relating land use policies and emerging energy policies. My utility would be one of the foremost clients of sound State land use planning.

An electric utility system must plan its facilities years in advance of the date they will be in operation if the utility is to meet its franchise obligation of providing electricity as that need arises. This planning requires extensive forecasting of population and economic growth, the examination of how future life-styles will affect needs, and the consideration of future relationships among different forms of energy. The planning includes an analysis of the various ways in which our electric system can be expanded to meet future demands for electric energy and an examination of the financial requirements of alternative expansion programs, and the land and evironmental planning implications of the alternative programs. The objective is to select and propose to Federal, State and local regulatory agencies a particular expansion program and those specific facilities that represent the best balance of environmental, economic and engineering requirements.

The lead times involved in our expansion program are substantial not only because of the technology we must apply but also because of the duration and complexity of current regulatory proceedings.

For example, under present condition it is necessary to make substantial commitments now for a specific nuclear generating unit that will not be in operation until 8 years or 10 years hence.

The electric utility industry in its advance planning efforts performs, because of the long lead times, forecasting which today must include a real quality of speculation and uncertainty about people's present and future social values, and government's policies—or non-policies—relating to economic growth and the balancing of economic, social and environmental values. Indeed States such as Connecticut now require electric utility companies to publish annual forecasts of the demand for electric energy 10 to 20 years into the future, and to

outline how the companies propose to meet that demand. Consequently, the utilities in Connecticut probably perform fuller and more open planning for the future than is being done by any other public or private entity, and are doing this planning in somewhat of a vacuum as to the State land use policies to which our energy planning should relate.

Connecticut has recently established a useful basis for undertaking a State land use planning process as contemplated in this bill, and I earnestly hope Connecticut will be one of the first beneficiaries of the bill. A State land-use planning process could, within a few years, provide an essential framework in Connecticut for the preparation of our companies' 10- and 20-year forecast reports, and a framework also for the State and Federal regulatory agencies that must then review our facilities applications.

While we believe that enactment of S. 268 would constitute a significant step toward better management of our land resources, we do suggest that there are certain potential problem areas:

There is some question whether or not the proposed level of funding and other incentives are sufficient to encourage the States to undertake the planning contemplated by the bill.

While the bill requires the States to project the need for key facilities and draws the States' attention to the impact of key facilities on adjoining land use, they are neither required to identify appropriate areas for the facilities themselves, nor to provide a mechanism for public or private "banking" of land within these areas.

While the clear intent of the bill is to insure a balance between economic and environmental factors, operative provisions of the bill fail to give effect to this and do not encourage the acceptance of trade-offs that will be necessary in providing key facilities. Furthermore, too little recognition is given to the relationship of State land use to regional and national consideration which at times must take precedence. At the State level, this may encourage those who would seek, in the planning process, to preclude essential economic activities.

Finally, while Senate bill 268 offers the prospect of better planning and decisionmaking within a few years, it does not offer, and I am sure is not intended to offer, immediate short term solutions to current land use problems. Decisions affecting land use will have to continue to be made, or we will fail to provide essential services for a growing population and a better standard of living for more of our people. The prospect of better land use planning in the future should not serve as an excuse for inaction or delay of those decisions that must be made with finality today. I am certain the committee is aware that lead times now prevailing in the electric utility industry require decisions today for facilities that will be needed in the 1980's. I would hope that the committee report would reflect this need for continuing decisionmaking.

In general, my comments about land use planning and this legislation are conditioned by my feeling that there are some people in our society who would let random growth continue without due concern about its potentially detrimental consequences, and others who would advocate ending all growth immediately. Both views should be challenged.

The former would impoverish the future for the sake of current satisfaction; the latter would cause economic chaos from which our country might never recover. The question of the economic growth rate we should seek, the balance among productivity and consumption, social needs, and the environment is now one of the central goal-debates in our country. We must seek democratic means through which to develop a national consensus. In the end, I am sure we will select a goal of economic growth, but in a pattern which minimizes waste, respects the environment and uses our resources, including energy, wisely.

The relationship between land use planning and growth is intimate. Housing and jobs, transportation, health, education, sewage disposal, water supplies, the need for open space, recreation and energy all have an impact on land use. In turn, land use policy determines the boundaries, scope, and plausible options within each of these areas. Thus, establishment of more coherent land use policies will come to be recognized as a milestone in the country's efforts to deal with the difficult issues implicit in the question of economic growth within a quality environment.

Thank you, sir, I will be glad to try to answer any questions you may have.

Senator HASKELL. Thank you very much, Mr. Sillin, for what is obviously a very well thought out comment on the bill, and I look forward to reading your entire statement with a great deal of interest.

One thing that we haven't explored with other people, or perhaps we have with some, but certainly not today, this bill basically, and I think directly, asks each State to prepare a program, and you have heard, undoubtedly, the dialog that goes on between—are we just asking the States to address themselves to a process, or should we set up some overall guidelines. But I would like to go one step further to an area that I am sure affects the State of Connecticut, that is the possibility of one State adopting a program that has an adverse effect on another State.

The bill says the States will cooperate. Should there be any—I gave, I think it was yesterday, the example of my State, which is Colorado, adopting a program which would have an obvious impact on Senator Hansen's State, and he is no longer here. My example was, suppose the State of Colorado decided all of its industries should be on the northern border, which would become the border of Wyoming. This has an impact on the school districts and police departments and fire departments in Wyoming.

I wonder if you, coming from the populous East where Connecticut obviously runs into New Lork and Massachusetts. whether you have given any thought to a mechanism to prevent this type of adverse interaction between States?

Mr. SILLIN. Senator, no. You are quite right, we have a very intimate kind of relationship, particularly in New England, and New England with its neighbor, New York. No, but I would hope that in the examination of critical—what we have identified in the bill as critical environmental areas, that obviously these have more of an interest than any one State. Particularly if you are looking at a compact area such as New England, that this will impose a burden on these States to examine jointly that critical environmental area that is contiguous, in which they share.

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I would say that the same thing would be equally applicable if we have made some suggestions and it would be, as we said, we would be glad to try to suggest any language that if the committee was interested in the ideas, to express it more fully in our statement, again we come to the critical key facilities.

I do think that this does require a quality of joint planning, large-scale development, the areas for large-scale development. There is an intimate relationship and I think we have concentrated in our own thinking those facilities, whether it be a critical environmental area or whether it was a key facility of more than local or State significance, as being something that there were needs, perhaps, for guidelines to the States in their examination.

But, I must confess to you, that we have not a compact, we had some experience with compacts.

I listened this morning and I share the same kinds of concerns. I thought perhaps there might be some role for the Secretary in the examinations of overlapping those critical environmental areas and those key facilities.

Senator HASKELL. Mr. Sillin, if you and your colleagues could give that a little thought, perhaps suggest some language that might be added to the bill, because it could develop into a problem and it seems to me that if we are now—this is the time to be thinking about it.

Mr. SILLIN. We would be very happy to try to do that, sir.

Senator HASKELL. Thank you, sir.

Senator Fannin.

Senator FANNIN. Thank you, Mr. Chairman.

I am very interested in your comments and I do look forward to your policy statement. I appreciate your forthright viewpoint and your analysis of what effect the bill would have.

Some mention has been made of the need to preempt by additional Federal legislation siting for facilities such as powerplants, transmission lines, pipelines, and deepwater ports. What would be your feeling about the Federal Government making determinations about where such facilities should be sited?

Mr. SILLIN. Senator, I recognize the nature of the problem that you are addressing; namely, that it will take some time. I am hopeful that this bill results, eventually, in a better and more orderly process of locating the kinds of resources and facilities you are talking about. This does not mean that we don't need in the meantime a way by which we can examine very difficult trade-off problems associated with the location. I do think we should address ourselves to that interim situation.

We have been hopeful that the thrust should be first to impose the sense of responsibility at the State level. I would also say to you that I would be glad to examine what might be the role of a Federal involvement in that. My mind is not closed. One thing that I have been troubled by was the proliferation of the suggestions on that problem. One of the basic concerns that all of us share is that it compounds the already difficult procedures, the delays that have become so much a part of the process.

I would say that to the extent we can look and feel disparate, that tradeoff which is difficult and very hard to address ourselves, but which nevertheless we must make, if we can find that place where it can be done expeditiously and with fairness to all of the parties, I would be very happy to involve myself in that kind of examination.

Senator FANNIN. Well, I realize the complexities. You view S. 268 in the overall as a preemption by the Federal and State governments of local government prerogatives?

Mr. SILLIN. No, I don't. I think as I see it, you are trying to provide incentive and encouragement for both local and State governments to coordinate and provide the kind of planning, and I would hope inherent in that would be an involvement of this private sector who has really the majority of the land impact question. We haven't had that policy and, frankly, the dialog is essential. It is one of the reasons we have the kind of problem we are now addressing ourselves to.

Senator FANNIN. I know the intent of the bill is to more or less sponsor programs and be sure they are carried forward advantageously for everyone involved, the local, State, and Federal governments, because we do have the Federal Government very much involved.

You spoke of key facilities. Would you favor treating key facilities in the same fashion as this bill treats areas of critical environmental concern? They must be identified. If there is disagreement there is an arbitration procedure.

Mr. SILLIN. I think you will find in my prepared text that I do call for the designation, as we designate environmental areas that we also designate areas for key facilities.

Senator FANNIN. That is covered in the additional remarks that you have?

Mr. SILLIN. Yes, it is.

Senator FANNIN. Well, thank you very much.

Senator HASKELL. Senator Hansen.

Senator HANSEN. No question.

Mr. SILLIN. Could I just add one thing, please?

Senator HASKELL. Please do.

Mr. SILLIN. I listened today to the discussion of sanctions, and I happen to be a fellow in the private sector, and I believe greatly in this thing called incentives. I have made a suggestion that I hope might be of some use in the hearing.

I suggest some kind of matching fund basis between the States and the Federal Government as a revolving fund that could be used to bank either the critical areas or critical environmental areas, or areas of key facilities. If the committee would like any further information from us on that, we would be glad to supply it.

Senator HASKELL. That is a very thoughtful suggestion. I appreciate that, and I look forward to reading it. We will place it in the record when we receive it.

Thank you very much.

Mr. SILLIN. Thank you.

[The prepared statement of Mr. Sillin follows:]

STATEMENT OF LELAN F. SILLIN, JR.
NORTHEAST UTILITIES
Hartford, Connecticut

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE

Senate Bill 268
"Land Use Policy and Planning Assistance Act of 1973"

February 7, 1973

Mr. Chairman and Members of the Committee

My name is Lelan F. Sillin, Jr. I am chairman and president of Northeast Utilities of Hartford, Connecticut, whose subsidiary companies generate and deliver a major portion of the electric power supplied in Connecticut and western Massachusetts.

It is a great pleasure to appear before this distinguished Committee today in response to your kind invitation that I comment on Senate Bill 268, the proposed "Land Use Policy and Planning Assistance Act of 1973".

My long interest in land use planning stems from my concern as an individual with the haphazard character of growth that has occurred in our country, particularly since the end of World War II. This concern has been reinforced by my experience in the utility business, where attention must be focused on future projections of population growth, jobs, housing and related economic activities--all of which impact on land resources. There is a close but apparently poorly understood relationship between land use, economic growth, social needs and environmental protection, and the way in which my industry and other suppliers of essential public services interact with all of these considerations.

Encouraging more effective and comprehensive land use planning at the local, state and regional level, collecting and disseminating data on land use patterns, and developing wise land use plans and policies should be important objectives for the Nation.

I support the legislative purposes of S.268. I believe that there is a new mood in the country toward urban growth and land use. Not only are people concerned with urban sprawl and deterioration of many of our central cities, they are concerned with the quality of community life, economic development and environmental enhancement--all issues inherent in the use of land.

More Americans do recognize the pressing needs of minorities and the poor for access to jobs, housing and health care. While there remains a longing for the past--a simpler time--there is concomitant realization that it can never be achieved. There is also frustration about the future because economic growth promises improvements in the standard of living, but the environmental trade-offs required for these improvements are not always clearly known.

In coming to grips with the real trade-offs implicit in our environmental-economic dilemma, we must grasp for an understanding of the interactions of the environment and the economy, the economy and society, society and its quality. Until we have faced up to the necessity for such trade-offs; until we have learned to base our planning on substantive rather than fashionable considerations; we will be reacting rather than anticipating, patching up rather than building for the future.

The issues we face are extremely complex. They are complex not only because of their intrinsic intractability but because they relate to one another in unexpected and subtle ways. Until this notion of interrelatedness is grasped in our policy endeavors, we are apt to stumble into a worse situation than we now have.

The time is right for leadership which can balance wise economic growth and sound environmental policy. At the fulcrum of this scale, which weighs quantity and quality, is land use policy.

An effective state land use planning process and program would:

- promote an urgently needed examination of the complex interactions among economic development, social needs and environmental concerns.

- contribute to an improved public acceptance of the necessity for essential facilities; such as, housing, highways, water supply facilities, mass transportation, sewage and solid waste processing facilities, and energy supply and delivery systems.

- encourage joint planning of the public and private sectors and thus improve the quality of decision-making.

- prompt a more rational discussion of economic and environmental issues and thus move toward a badly needed concensus on coherent national and state goals.

- hold down the costs of both public and private facilities, minimize environmental intrusion, and insure a wiser use of the Nation's land resources.

Enactment of S.268 would provide a significant first step toward the objectives I have mentioned. More specifically, it would:

- encourage the states to undertake the difficult task of devising comprehensive land use plans which would link planning to public and private decision-making.

- provide federal funding assistance and a broad framework within which the states may begin to address the complex issues and the trade-offs inherent in reconciling economic, social and environmental goals.

- focus state land use planning on critical environmental areas and key facilities and developments essential to the overall well-being of people.

While we believe that enactment of S.268 would constitute a significant step toward better management of our land resources, we do suggest that there are certain potential problem areas:

- there is some question whether or not the proposed level of funding and other incentives are sufficient to encourage the states to undertake the planning contemplated by the bill.

- while the bill requires the states to project the need for key facilities and draws the states' attention to the impact of key facilities on adjoining land use, they are neither required to identify appropriate areas for the facilities themselves,

nor to provide a mechanism for public or private "banking" of land within these areas.

- while the clear intent of the bill is to insure a balance between economic and environmental factors, operative provisions of the bill fail to give effect to this and do not encourage the acceptance of trade-offs that will be necessary in providing key facilities. Furthermore, too little recognition is given to the relationship of state land use to regional and national considerations which at times must take precedence. At the state level, this may encourage those who would seek, in the planning process, to preclude essential economic activities.

Finally:

- while Senate Bill 268 offers the prospect of better planning and decision-making within a few years, it does not offer--and I am sure is not intended to offer--immediate short-term solutions to current land use problems. Decisions affecting land use will have to continue to be made, or we will fail to provide essential services for a growing population and a better standard of living for more of our people. The prospect of better land use planning in the future should not serve as an excuse for inaction or delay of those decisions that must be made with finality today. I am certain the Committee is aware that lead times now prevailing in the electric utility industry require decisions

today for facilities that will be needed in the 1980s. I would hope that the Committee Report would reflect this need for continuing decision-making.

In general, my comments about land use planning and this legislation are conditioned by my feeling that there are some people in our society who would let random growth continue without due concern about its potentially detrimental consequences, and others who would advocate ending all growth immediately. Both views should be challenged. The former would impoverish the future for the sake of current satisfaction; the latter would cause economic chaos from which our country might never recover. The question of the economic growth rate we should seek, the balance among productivity and consumption, social needs, and the environment is now one of the central goal-debates in our country. We must seek democratic means through which to develop a national consensus. In the end, I am sure we will select a goal of economic growth, but in a pattern which minimizes waste, respects the environment, and uses our resources--including energy--wisely.

The relationship between land use planning and growth is intimate. Housing and jobs, transportation, health, education, sewage disposal, water supplies, the need for open space, recreation and energy all have an impact on land use. In turn, land use policy determines the boundaries, scope, and plausible options within each of these areas. Thus, establishment of more coherent land use policies will come to be recognized as a milestone in the country's efforts to deal with the difficult issues implicit in the question of economic growth within a quality environment.

I. Advantages of State Land-Use Planning

It is the purpose of planning to assist the decision makers in public or private organizations by (1) articulating goals, (2) identifying needs, and (3) evaluating alternative means for meeting them.

Planning may be counter productive if it is not comprehensive in its coverage of goals, needs and programs, and if it is not closely linked to decision making. Planning is of little value if it is not an ongoing process continuously reexamining goals, needs and programs, as well as monitoring how effectively needs are being met and goals achieved by programs already under way.

Given the clear need of both the public and private sectors for improved state land-use planning today, and the pressing need for a better reconciliation of economic and environmental goals, state land-use planning would have the following advantages:

A. It Will Promote Examination of Interrelationships Among Competing Needs

Institutions such as the public agencies and utility companies that present their plans for public scrutiny have seen how difficult it is to achieve consensus and balance among diverse public interests at the local and state level. I am sure the Committee knows that the land-use planning process being created by this legislation will face the same challenges. The process will become one in which many competing interests will vie with each other, and it quite likely will be a battleground for some narrow interests who see their own views as paramount.

Stated most simply, what represents a cost to one man may appear as a benefit to another. What represents a priority project to one state may appear unneeded to another. What may be essential to regional or national interests may not be accepted or seen as desirable by any one state. Land-use planning impacts significantly on all areas of society: housing, jobs, transportation, health, education, recreation and energy, to name only a few. All such elements are intimately interrelated. A failure to examine carefully these interrelationships could result in a shortfall in one area having serious implications for other areas. Part of our deficiency in the past is traceable to a tendency to treat each such area as though it were largely independent.

The state land-use planning process will, of necessity, require the examination of such interactions, not in isolation, but in concert; not in the interests of one group or another, but in the overall social interest. The difficulty in doing so is great, but the advantages are greater.

B. It Will Facilitate Acceptance of the Necessity for Essential Programs to Meet Identified Needs

In an important way, the formulation of goals and identification of needs will foster a consensus, a greater willingness to meet those needs, because of an understanding and acceptance of goals. This acceptance permits attention to be focused on alternative courses of action for achieving goals and satisfying needs.

As a result, there will be a much greater readiness to muster the resources, and accept the trade-offs necessary, for performing the

tasks at hand, whether they be the provision of badly needed housing, mass transportation, water, sewage and solid waste disposal systems, or basic energy supply and delivery facilities.

C. It Will Encourage Public-Private Planning and The Linkage of Planning to Decision Making

One of my hopes for state land-use planning in the 1970s is that the planning process will create new linkages between public and private planning and between planning and decision making. Our present institutional arrangements do not adequately create these linkages.

Most of the development that determines land-use patterns in our country is privately sponsored and financed. This development is subject to some regulation by government, primarily through local zoning laws. Much of this development impacts beyond local boundaries. What we are lacking is a mechanism by which the private sector can systematically discuss its plans with government at a formative stage, and can learn, in turn, of existing or emerging public plans that may affect private decision making. An effective state land-use planning program would promote a considerable degree of joint planning by public and private sectors, and thus provide this sorely needed linkage.

State land-use planning provides a common basis for public and private decisions that determine or influence land-use patterns. These decisions relate to development undertaken by government itself, as well as the activities that are regulated by government through such laws as local zoning and other forms of land-use

control. The linking of planning and decision making is as important as it is difficult. State land-use planning must include methods for coordinating public and private decisions which significantly affect land use. Through such coordination, planning will have new validity and usefulness, and decision making will be better informed.

D. It Will Advance the Discussion of Key Issues, and Promote a Consensus of Goals

At the present time, a utility, which must look to government and the public for signals, finds that those signals seem to be flashing red and green at the same time. Thus, voices are raised expressing concern over the adequacy of electric power; at the same time, others oppose the industry's efforts to provide needed new facilities. Some insist they are prepared to pay whatever costs are associated with environmental improvements, while others oppose applications for increased rates.

For the energy industry, just as for government, a clear and direct consequence of population growth and economic development is the need for key facilities. To be fully responsive to whatever state and national economic goals are established, it is imperative to have both governmental and public acceptance of the facilities required by such goals. As government and the society move toward a clearer definition and accommodation of economic and environmental goals, the capacity of both the public and private sectors to respond will be measurably strengthened.

A state land-use planning process would enable key issues to be discussed on a less emotional and a more rational basis. Such a process will help to reconcile our economic and environmental goals. At both state and national levels, these interests are on a collision course which dims the prospect for achieving the elusive but essential goal of balancing the new aspirations of people for a quality environment in a sound economy. An effective land-use planning process in each state would allow us as a Nation to consider more clearly where we are, where we want to go, and how we want to get there. Such a process would require that our economic and environmental aspirations be considered in juxtaposition. For example, rather than become preoccupied with highways at one time and then, later, with mass transportation, the two can be wed into a plan that recognizes the propriety of both. The process would raise such considerations to a new public visibility and facilitate a badly needed consensus.

E. It Will Ensure a Wiser Use of Resources, and Help Control Costs

An effective state land-use planning process would permit the public and private sectors to achieve a more rational pattern of growth, to allocate their resources more wisely, and to control the costs of growth to the benefit of both taxpayers and consumers. A cohesive set of state land-use guidelines would reduce the ad hoc quality of growth and minimize environmental intrusion. By coordinating residential, commercial and industrial development patterns so that one reinforces the other, capital and operational costs could be better controlled. Highways and mass transportation systems would run between places where community growth is considered most appropriate.

The sizing of public service facilities could be based on more accurate demographic and economic projections and thus errors, resulting in facilities either too large or too small, could be reduced.

Concentrating development in particular areas at any given point in time, rather than encouraging suburban sprawl, could bring savings in the construction and operation of service systems. Coordinating the construction of highways, mass transit facilities and energy transmission lines along adjacent rights of way could reduce both the total land requirements and the dollar costs of such facilities. The siting of generating plants could be based on publicly tested and accepted projections of future need, thus reducing the costs of delayed facilities. Such cost savings would be important to both government and industry which must provide increasingly large sums for the construction and operation of public service facilities. Most important, the cost saving would benefit taxpayers and consumers.

A planning process which achieves these objectives should be encouraged.