THE STATES' ROLE IN LAND USE: A RECOMMENDED STRATEGY FOR STATES IN THE IMPLEMENTATION OF A STATE-WIDE LAND USE CONTROL PROGRAM

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TABLE OF CONTENTS

		Page
ACKNOWLEDGEMENTS		ii
Chapter		
I.	INTRODUCTION	1
	Background to the Problem The Problem Findings Recommendations	
II.	FEDERAL LEGISLATIVE ROLE IN LAND USE ISSUE	12
	Introduction to Current Legislation Development of Current Legislation The Jackson Bill The Administration Bill Current Legislation	
III.	STATES' ROLE IN LAND USE	27
	Basis of State Land Use Responsibility Historical Development of Land Use Controls States and the Federal System	
IV.	STATE ACTIVITY IN LAND USE	41
	Reasons for State Action Selected State Land Control Programs Hawaii Vermont Maine Massachusetts Wisconsin Colorado Model Land Development Code Regional Organizations in Land Use	
V.	CONCLUSION	68
	Achieving the Desired Comprehensiveness Recommendations Stage I, the Consolidation Period The Federal Level The State Level	

Page

Stage II, the Implementation Period
Stage III, the Enforcement Period
Summary

APPENDIX 91

LITERATURE CITED 99

BIBLIOGRAPHY 109

CHAPTER I

INTRODUCTION

Background to the Problem

Between now (1973) and the year 2000, it has been estimated that Americans will build "as much again as we have built in our entire history.(1)." Such a statistic is reassuring in that a nation which is capable of redoing in thirty years what originally took approximately three hundred has tremendous capability and potential. At the same time, such a statistic is unsettling. If the next thirty-year period of development occurs in the same unplanned manner as merely the last thirty, let alone the last three hundred, the inhabitants of this "second America" (2) will undoubtedly suffer a marked decline in the quality of life, so vital to every citizen.

Many people argue that the quality of life has never been better. They point out that ten years ago over twenty-one percent of American families were within the poverty classification. Today, this number has been reduced by one-third. The number of non-white families earning over $7,000 annually has more than doubled during the same period. Higher education is being pursued by more Americans than ever before. More people are eating better, dressing better, owning homes, and using telephones than ever before (3). There has been a voluntary curbing of our birth rate, and urbanization has slowed from

the breakneck pace of the last decades (4).

Comments such as the above are convincing, but misleading in terms of the quality of life. The same industry and technology which has produced many niceties in our life styles has also produced side effects which have had a dilatory impact on our life support systems: the air, the water and the land.

For all our mechanized advances and change, the by-products have dumped 125 million tons of noxious fumes per year into the air; produced enough waterborne waste to consume, in dry weather, all the oxygen of the twenty-two United States river systems; and compacted seventy percent of the population on one percent of the land.(5). This ability to overlook the gradual destruction of our natural resources was captured by a writer commenting on New York's Verrazano Narrows Bridge: "We can no longer afford to create open sewers and then span them with a poem (6)."

Serious as they have become, the problems of air and water pollution are not beyond solving. Technology and hard work can still correct man's careless mistakes. It has also been shown that social attitudes can change and successfully curb the rates of population growth (7). However, the damage that is done when unspoiled land is paved over or poorly developed may well be irreversible. In addition, there is no indication that popular attitudes toward increasing demands on the land will voluntarily change. The opposite is true. People continue to flock to suburbs and utilize larger lots there. Industries carve out huge parcels of open space. Energy requirements double every

ten years, causing more land to be used for transmission and production. Commercial centers grow larger and larger. Surface transportation demands are increasing (8). Without any action by either citizens or governments to control the use of the land, the situation does not look encouraging. Will Rogers said prophetically some years ago that Americans should "Buy land now, 'cause they ain't making any more of it.(9)."

The type and extent of this future growth and its effect on the quality of life, will depend primarily on one factor: the use of the land. If land use is regulated, all related issues fall into an orderly pattern. Land use becomes the key to understanding our social and physical environmental problems. By effectively planning for, and controlling the social and physical environments, enhancement in the quality of life is assured.

Planning and control, to be effective, must emanate from the national level. Without national direction, coordination and impetus for action by all governmental levels will not occur. Once initiated, the states must become the key participants in planning if an effective program is to be realized. States will have the responsibility of establishing a method of program implementation and enforcement. An effective program will rely on a clarification of roles and responsibilities of all governmental levels, and especially the development of meaningful interaction and respect between state and local levels.

Both state and local levels provide extremely important contribution in a land control program. States are the custodians of the

traditional land control "tools." They also provide the elements of area and long range perspective in decisions concerning the commitment of parcels of land. They can make use of certain economies of scale in planning, management and the construction of facilities. Yet, to date, few states have exercised their potential authority or responsibility in land use matters.

The Problem

If a land control program is to be effective, it is vital that states re-establish their inherent role. The problem addressed in this thesis is: what course can the states take to assert their much needed and duly constituted role in land use matters? This assertion of state responsibility will come at the expense of the local government's traditionally autonomous role and must be accomplished without jeopardizing the loss of the important elements of local government's cooperation and popular support. Local governments jealously guard certain state granted powers in land use. Now that states recognize the valuable contribution which they can provide, how can the state discreetly take back this authority from the local governments?

To understand this problem, it is necessary to first examine various aspects of the political process itself. Once certain elements of the political process, the interrelated issues of the land use problem, and the traditional governmental roles have been clarified, it is possible to recommend a course of action for states to follow. This recommendation involves a reassignment of governmental roles and results in a comprehensive land control effort, based upon inter-

governmental cooperation and interaction.

For too long, plans and programs have failed because they lacked the necessary understanding of the political process, the audience toward which the plans were directed, and the various governmental roles in the development and implementation of these plans. The matter of land use is too vital to suffer a similar fate.

Findings

The American political process is extremely deliberate, painstakingly slow. Gradually, through an evolutionary process, advances are made. When they do occur, they are rarely the work of one, or even a few men. The final effort is the culmination of years and years of work by hundreds and hundreds of individuals. When a nation is as complex and powerful, as is the United States, there is too much at stake to risk on sudden, ill-conceived reactions. Well designed, clearly deliberated policies and programs are an absolute must. This process takes time.

The end product of the political process has not always been successful, nor has it always been gradual in its development. The complexities of society call for, and often demand, a "hurried up" effort to meet an immediate, critical issue. Such crises are normally short lived and do not alter the gradualness of the process. Pursuant to a "crisis," a period of rest and recuperation often sets in when the process winds down to regroup. There is a type of "backlash" against haste.

Land use regulation has felt the effect of both the gradual, and the "hurried up" versions, and thus is well suited as a subject for an appraisal of the political process. The "hurried up" process, experienced by several states in their independent efforts at a land use control program, was found to be no more than a "reaction to a crisis." Once the brush fire was quelled, states returned to a more orderly, sequential drift of day to day political activity. The sudden reaction by certain states in land use matters is usually explainable upon closer examination and is nothing more than an ordinary and welcomed departure from the normal routine. Fred Bosselman called these recent moves by several states to institute land control programs as a "revolution" (10). On closer examination, the use of the term "revolution" would seem to connote a slightly overblown concept.

At the federal level, the workings of Congress in the creative aspects of national land use legislation provides a textbook model for deliberation and compromise. The blending of views to achieve an acceptable plan exemplifies not only the gradual evolutionary aspect, but also a predictable or sequential pattern to the political process. A review of certain federal efforts since World War II related to land use also reflects a recurring sequence (11). The sequence goes something like this: first, attack an immediate issue through a single-purpose program. Later, develop a more comprehensive program and provide for a planning effort to prevent the issue from redeveloping. Finally, coordinate a series of these programs into a national policy, which

allows for intergovernmental action and responsibility. In this way, the burden for dealing with an issue such as land use is transferred to local and state levels where it can be more effectively handled.

The reasons for the land use effort's being centered on state and local levels are:

(1) The states have traditional and inherent powers to deal with land use planning and control. Their powers of eminent domain, and taxation, and the responsibility for protection of the health, safety, welfare and morals of its citizens (through the police power) provide the traditional arsenal of weapons in this battle to control land use.

(2) The states are in a strategic position within the federal system. Their political relationship to the federal government, where the ultimate power and policy direction resides, and to the local government, where traditionally all land use decisions have been made, places the states as the important middle man in carrying out a successful effort at land use control.

An examination of aspects of the political process at the state level also reveals a tremendous untapped potential. States are truly unique and independent entities. Their differences in political, social, cultural and economic attitudes are reflected by the variety of alternative programs developed to control land use.

Two common threads ran throughout the states examined. These were: (1) the states' ultimate concern is for the enhancement of

the quality of life for all; and (2) the states' political processes exhibit the same gradual and sequential characteristics recognized at the federal level.

States, which have imposed land use controls provide valuable examples of alternative programs for consideration by states less experienced in the use of regulatory techniques. Experienced states can also prove valuable to the Federal Government's effort at directing the overall program.

"Veteran" states reveal that:

(1) Land use programs require a coordinated governmental effort, based on a comprehensive plan to provide direction to the myriad decisions related to land use.

(2) States have unique attributes and therefore the Federal Government's legislation must provide elastic type guidelines, in order to obtain full and meaningful cooperation by all states. By nature, broad guidelines are weak guidelines. States, however, have exhibited a strong tendency to proceed beyond the minimum guidelines of the federal act. For this reason, the federal guidelines serve more as an impetus to recalcitrant states, then a limitation on state potential.

(3) States are only recently realizing their tremendous potential in dealing with issues which previously were handled at either the federal or local level. As a result of interstate cooperation, revenue sharing, reapportionment, reorganization and revitalization of the inherent powers, states are launching out into previously

unchartered political waters, with substantial success.

(4) Future state action should proceed in a manner most compatible to the traditional and proven methods. This means gradually developing an effective land control program through a process of incremental stages. In this way, states will insure the success of their venture through eliciting intergovernmental cooperation and respect. The Federal Government's resources and the local government's traditional power base must be slowly converted and shaped to serve the best interest of the states.

Recommendations

Based on the findings, and the assumptions that (1) the Federal Government will pass a Land Use Policy Act relatively unchanged from the present efforts under consideration; and (2) this act will allow flexibility within the various states as to the exact method of implementation, and program design, it is recommended that the following policy be adopted:

States should take full advantage of the confidence shown in them by the Federal Government, and their inherent political capabilities to embark on a sequential, three-stage plan for the development of an effective and efficient program related to land use control.

Stage I would be the level that all states reach in compliance with federal guidelines in the National Land Use Act, and represents the minimum effort (12). Controls are primarily environmental issue oriented and directed at solving an immediate crisis. They lack statewide comprehensive planning or long range control capabilities. States, during this stage, will be able to obtain administrative and planning

experience in the development of a control process, a working rapport with other levels of government on land use matters, and an opportunity to test various types of control mechanisms for their effectiveness on a less than state-wide scale.

When states have dealt with the most immediate threat to the quality of life, overcome any hostilities and gained the respect of the local and regional governments, and developed an efficient administrative process for implementing the control program, they should slide into Stage II. In this stage, the administrative machinery would be beefed up to deal with controls on a state-wide basis. Social and economic issues would be of increasing concern in the control process and would begin to rival the environmental and physical development elements. Incentives would be offered for local governments to extend local land use controls, with the state acting where state-wide guidelines were not met. Sub-state regions would be established to work with local governments in the design and enforcement of the control process, tailored to local and regional needs but under state guidance.

Finally, the door would be open for entry into Stage III, in which a comprehensive state-wide program would be attained. Greater reliance would be placed on local and regional efforts for providing an efficient state operation. The states would vary in the amount of decisions relegated to local entities, but all issues (social, environmental, economic, physical and aesthetic) would be packaged into the program. At Stage III, states would have the optimal capability of

providing for the enhancement of the quality of life for its citizens, one of the basic justifications for state government itself.

CHAPTER II

THE FEDERAL LEGISLATIVE ROLE IN LAND USE ISSUE

Introduction to Current Legislation

Since World War II, Congress has been giving more and more attention to measures dealing with land planning, management and development. Its "acts," like the problems they were designed to meet, have portrayed a type of evolutionary process. The Federal Government reacted to the growing complexities related to the use of the land by providing grants to states and local governments. These conditional grants were to assist lower levels of government in the establishment of programs directed at solving specific problems (13).

In later years, the Federal Government has drifted slightly from its single-purpose approach and provided funding for the development of comprehensive programs and planning processes (14). Through broader and more comprehensive strategies, the problem areas, with their recognized interrelationships and complexities, were tackled at the source. The previous "reacting to brush fires" approach was seen to be an unsatisfactory strategy.

An obvious indication of this expansion of federal interest in land use is the amount of legislation introduced each Congressional session. By the Ninety-First Congress (1969-1970) the calendars of both Houses reflected nearly 100 land use oriented bills. The Ninety-Second Session's entries well surpassed the hundred mark. The Ninety-

Third Congress (1973-1974) is anticipating a two-fold increase of last session (15).

The bills in Congress are a reaction to the public's growing awareness of the conflicts in land use. Primarily, these conflicts center around urban pressures, where population growth and shifts are in competition with the need to preserve quality in our life style and our physical surroundings (16).

The majority of these bills call for greater participation by the state in land management. This coincides with (1) a gradual reawakening of states within the Federal System (17); (2) the recognition that it is states which Constitutionally have custody of the policy power "tools" for managing and controlling the land's use; and (3) the fact that many states have already taken some initiative in land management and proven themselves as an effective level of government to implement such programs.

Of the one hundred bills dealing with land use introduced last session, it should be pointed out that a large number would have indirect or tangential impact on land resource relationships (18); while others would deal with specific land issues of limited scope (i. e., coastal zone legislation, mined areas protection, power plant siting). However, the last three sessions have witnessed the first genuine effort at introducing comprehensive legislation specifically dealing with the creation of a national land use policy. The policy would be state implemented with reliance on federal guidelines, funding and coordination, and apply to all lands, public and private.

Through an examination of this national land use legislation since 1970, insight can be gained as to the functioning of the federal political process. This review is meant to acquaint the reader with the characters and the process, rather than a newspaper type narrative of latest developments in the legislation. Congress, it will be seen, leaves the creative aspects and implementation of the policy totally up to the states and their political subdivisions. Without a working knowledge of how Congress thinks and acts, it would be impossible for the states to interpret the broad federal legislation into the type of state-wide land use program that can best attain the objectives of the bill.

Development of Current Legislation

Since 1970, Congress has been confronted with legislation designed to provide for a National Land Use Policy. While the bills have changed from year to year, the ultimate goal of the legislation had been generally defined as:

(1) To promote the nation's well being by better planning the use of its land; and,

(2) To assist and encourage each state to improve its land use planning and decision making process (19).

At present, there are several bills before Congress which deal specifically with a national land use policy. This report will deal with the two separate bills which have the most widespread support and the best chance of success (20). They are both entitled, "The Land Use Policy and Planning Assistance Act of 1973." After nearly three

years of hearings, floor debate, amendments and other novelties of the American political process, the bills are practically identical. The two bills are "the Jackson Bill" and "the Administration Bill."

The Jackson Bill

This bill is named after its sponsor, Senator Henry "Scoop" Jackson. His latest bill, S.268, is the grandson of the original national land use policy legislation, introduced by the Washington Democrat during the 91st Congress, January 29, 1970. At that time, the bill was assigned S.3354.

The original land use bill was seen as a follow-up to the National Environmental Policy Act (NEPA) passed in 1969. The Senator had played a major role in the passage of that legislation, which represented a first step at the national level toward protecting and maintaining a desirable quality of the environment. Following the successful prosecution of NEPA, after nearly ten years of struggle, and desirous of capturing support for other environmental concerns before public enthusiasm waned, Jackson focused his attention on the problem of land use itself.

He expressed the closeness of purpose between NEPA and his desire for national land use legislation.

> Adoption of the National Environmental Policy Act of 1969, constituted a Congressional Response to the need for a comprehensive policy and a new organizing concept for dealing with environmental problems. As the Act's author, I felt a National Policy for the environment was necessary to provide both a conceptual basis and legal sanction for applying to environmental management the high level policy concern we apply to other areas of critical national importance. Over the last two years, the strength of that Act has been well established.

> We must, however, further enlarge the Federal Government's capacity to sort out environmental conflicts, to weigh alternatives, and to avoid the pitfalls of concentrating on immediate, pressing problems -- the environmental 'causes celebres' -- with which the media daily confronts us to the exclusion of long term policy considerations. It is, therefore, essential that we develop a framework within which the myriad proposals conserve national resources can be balanced against the demands they collectively impose upon the environment. Put simply, we need a focal point upon which we can compare alternative proposals to achieve our goals. That focal point, I submit, should be the use of the land (21).

Jackson called his bill (S.3354) a working draft. He asked federal, state and local officials, planners and representatives of business, industry and public interest groups for their comments. The bill was nothing more than a starting point for review and for analysis (22).

His initial effort was to modify an existing institution (the Federal Water Resources Council), allowing it to deal with land as well as water related issues. Senate Bill 3354 would amend the Water Resources Planning Act of 1965 (PL89-90) by establishing a new Land and Water Resources Planning Council. It seemed a natural progression.

Jackson's amendment would establish a framework within which national and state land use problems could be resolved before they became controversies (23). The Federal Water Resources Council already administered similar programs concerning the use of water and related land resources. It was seen as the logical vehicle to carry on the efforts of a national land use policy.

It is a popularly accepted idea that governments and the public become attached to institutions. It seems far better to modify, enlarge, or update ineffective agencies or offices than to abolish

or replace them. The amendment process is one vehicle to accomplish this smooth transition.

The amendment called for establishing a "Land and Water Resources Council" consisting of the Vice President, several Cabinet secretaries, and the chiefs of the Council of Environmental Quality, the Federal Power Commission and the Environmental Protection Agency. The Council would:

(1) prepare broad studies of Federal policies and programs related to land use;

(2) establish procedures for preparation of comprehensive river basin plans;

(3) authorize grants to states and interstate agencies for development of land use plans subject to federal agency and Council review and approval;

(4) deny aid to states with approved plans which were not implementing those plans; and,

(5) prohibit certain federal projects or aid to state projects which would adversely affect the environment in any state which had not submitted a land use plan within five years of the bill's enactment (24).

The bill received four days of hearings in 1970 (March 24, April 28-29, July 8). During these hearings the bulk of testimony praised the general efforts of the bill. The inadequacies of existing land planning arrangements at the state level (25), the need for comprehensive planning (26), and the need for interstate cooperation

(27) were commonly repeated themes. Russell Train, Chairman of the Environmental Quality Council in expressing the Nixon Administration's position, interjected the first hint that the bill might not be the best answer to the land use issue. He stated, "There is a need for further discussion and public debate on the ideas contained in S.3354. The Administration can not as yet give unqualified support to the present bill (28)."

According to committee members, S.3354 expressed a national commitment to comprehensive land use planning and management and would set up a national framework for land use activities. It was reported out of committee on December 14, 1970, too late in the 91st Congress to receive floor debate.

Interest in land use legislation had been stimulated. A report from the committee following the hearings strongly urged all levels of government to actively support this effort. The Committee reminded lower levels that the focus of the bill was on state governments with their well-established political institutions capable of responding to citizen wishes. It also stressed that because of the failure of local governments to cope with the diminution of the quality of life, extremely important demands fell to state planning agencies. However, in many instances states were not effectively involved in evaluating the environmental, social or economic impacts of either public or private development (29).

The recognition of the need for states to become more active in land use legislation was reflected in a policy declaration approved

at the National Governors' Conference in 1970. It stated:

> There is an interest and need for a more efficient and comprehensive system of national and state-wide land use planning and decision making. The proliferating transportation systems, large-scale industrial and economic growth, conflicts in emerging patterns of land use, the fragmentation of governmental entities exercising land use planning powers, and the increased size, scale and impact of private actions have created a situation in which land use management decisions of national, regional and state-wide concern are being made on the basis of expediency, tradition, short-term economic considerations, and other factors which are often unrelated to the real concerns of a sound land use policy . . .
>
> There should be undertaken the development of a national policy, to be known as the National Land Use Policy, which shall incorporate environmental, economic, social and other appropriate factors. Such policy shall serve as a guide in making specific decisions at the national level which affect the pattern of environmental and industrial growth and development on the Federal lands, and shall provide a framework for development of interstate, state and local land use policy. . .(30).

The need for a national land use policy had been firmly established as a result of the hearings and Senate action during the Ninety-First session. When Congress reconvened in January, 1971, Jackson re-introduced his bill. It was designated Senate Bill 632.

The Administration Bill

During the same year, the Nixon Administration introduced legislation designated as Senate Bill 992, on February 17, 1971. This bill was part of the President's package of legislation presented in his Message to Congress on the environment at the start of the Ninety-Second Session. Companion legislation was introduced in the House and assigned to the House Interior Committee (HR4332, 4337, 4703).

In his Environmental Message to Congress (February 8, 1971), President Nixon pointed out that:

> While most land use decisions will continue to be made at the local level, we must draw upon the basic authority of state government to deal with land use issues which spill over local jurisdictional boundaries. The states are uniquely qualified to effect the institutional reform that is so badly needed, for they are closer to the local problems than is the Federal Government and yet removed enough from local tax and other pressures to represent the broader regional interests of the public. Federal programs which influence major land use decisions can thereby fit into a coherent pattern (31).

The "Administration Bill," which emanated from this address was introduced on February 17, 1971, (S.992) as "The National Land Use Policy Act of 1971." Rather than employ the amendment vehicle selected by Jackson, the Administration Bill would establish newly created federal office of Land Use, and stressed a program which placed primary emphasis on the need for states to take the initiative. The program would be state run, without the bulky administrative maneuvering at the federal level (32).

Specifically, the bill (S.992) would:

(1) authorize the Secretary of the Interior to make two successive grants of up to fifty percent of the cost to states to develop a land use program;

(2) authorize the Secretary to make annual grants up to fifty percent of cost to states for the management of their programs, provided state programs met federal criteria;

(3) establish a requirement for consistency of Federal projects and activities with state land use programs;

(4) issue guidelines for states to follow in planning and management of "critical" areas and types of development of state-wide concern; and,

(5) require state plans within five years following enactment of the bill.

While both bills were to undergo significant amendments while in committee during 1971-1972, the most profound difference from the beginning was the depth of the state plans. The administration bill was directed primarily at establishing methods for protecting land of critical environmental concern, controlling large scale development, and regulating the use of lands around key facilities and new communities. In fact, annual grants to states, according to Section 104 of S.992, were dependent upon state plans including programs to effectively deal with those "key" areas.

Hearings on both S.632 and S.992 were held on May 18 and June 7, 22, and 23, 1971. Nearly all testimony urged national policy formulation to assist states and local governments to improve their performance in land use control procedures (33). Federal and interstate commissions, such as the Douglas Commission, the Kerner Commission, the Kaiser Committee, and the Advisory Commission on Intergovernmental Relations headed the list of advocates for the development of a policy which encouraged expansion of the state's role and responsibility in land use while advocating locally administered controls.

A series of companion bills (34), some indirectly related new legislation (35), and President Nixon's Environmental Message of February 8, 1972, featured so many new aspects that in 1972 the Administration bill was liberally amended (36).

Among the revisions were sections which strengthened the states'

control over site location of key facilities (37), a reduction in the time frame for compliance to three years (38), and most important, santions in the form of reductions in several federal grant programs were to be imposed on states which did not meet guidelines.

Cutbacks would affect grants under the Airport and Airway Development Act, Federal-Aid Highway Program and the Land and Water Conservation Fund (39). Reductions would amount to seven percent the first year of non-compliance after the three year period, fourteen percent the second year and twenty-one percent the third year.

During 1971 and 1972 the Senate Committee solicited views from experts and interested parties as to which of the two major bills (S.632 of S.992) was preferred. In a letter to the Washington Post Senator Jackson commented on an editorial which supported his version over the Administration's bill. The Senator said:

> Both my bill and the administration's bill would provide grants-in-aid to the states to develop state land use programs. One major difference between the two is that my bill requires 'comprehensive planning' by the states, while the administration's bill requires state control only over lands in special areas or upon which special uses might be sighted (40).

By "comprehensive," he meant the "breadth of consideration" (41) (the integration of all relevant social, economic and environmental concerns). He did not mean <u>in-depth</u> intervention by the state in truly local planning decisions. However, no state, nor federal program had provided for this comprehensiveness in land-use matters. Even Hawaii's State Land Use Law which was based on state zoning and planning, and had strong social motives behind the law lacked a "comprehensive" capability, in Jackson's terms (42). American political institutions

tend to respond to immediate pressures. They are not well-suited to taking comprehensive, long range views of complex problems (43). This matter of comprehensiveness became a major questionmark in the Jackson bill, and the focal point of debate over the merits of the two major bills.

The system of "comprehensive," state-wide land use planning, as mentioned in both S.3345 and S.632, was questioned by governors, state planning officials and experts in land use planning. Most states were so weak, in terms of their capacity to administer a "comprehensive plan." It was estimated that it would take at least five to ten years to undertake and implement a comprehensive planning effort for the states' total land resource base, as called for in the Jackson bill (44).

On June 19, 1972, Jackson's committee revised its strategy and entered an amended version of S.632. It dropped the amendment of the Water Resources Planning Act approach in favor of a separate bill. It was retitled the "Land Use Policy and Planning Assistance Act of 1972." The bill provided for the administration of a land use policy to eminate from a "to be created" Office of Land Use Policy Administration within the Department of Interior. National policy was to be created by a National Advisory Board on Land Use Policy. (The Board was a remnant of the Water Resources Council approach, employed in the earlier version).

Further alterations included the insertion of clearly defined sanctions similar to the administration's proposal. It also carried

a three-year period to comply with guidelines, followed by a five-year time period for implementation. (The original bill called for a five year -- five year arrangement.) The cost sharing provision of federal-state input, 90-10 the first five years and 66 2/3 -- 33 1/3 the remaining three was unchanged, but authorization was up to $800 million, $100 million per year. On the nineteenth of September, the bill (S.632) was ordered out of committee.

On the floor of the Senate, the bill received further refinement. The Upper House eliminated the sanctions dealing with reduction in federal grant programs. It also reduced the authorization to $170 million. The federal share was cut to 66 2/3 the first two years and 50 percent thereafter. On an affirmative vote of sixty to eighteen, the bill was forwarded to the House. No action was taken prior to the close of the Ninety Second Session. The bill, somewhat closer to fruition, therefore died for a second time. Neither the companion legislation on land use policy in the House nor Senate 992 received floor consideration during the Ninety Second Session.

Current Legislation

In January of 1973, Jackson and the administration introduced their current versions. As has been already pointed out, both bills are now titled the "Land Use Policy and Planning Assistance Act of 1973." It is therefore not surprising that the two bills are nearly identical. The most obvious points of differences have been resolved (45).

Jackson's bill (S.268) no longer asks states to develop plans

which would provide for a comprehensive strategy. Rather, his bill calls for a continuing state land use planning process, stressing development of a plan which accommodates primarily environmental issues and matters of more than local concern. In fact, his bill employs the identical language concerning direction and scope of the land use plan, as does the administration's bill (S.924). (See Appendix A.)

States are to develop land use plans which focus on four categories of critical areas and uses of more than local concern. These are:

(1) areas of critical environmental concern (i. e. beaches, flood plains, wetlands, historic areas);

(2) key facilities, such as major airports, highway interchanges and frontage roads, recreational lands and facilities, and facilities for the development, generation and transmission of energy;

(3) development and land use of regional benefit; and

(4) large scale developments (i. e. major subdivisions or industrial parks) (46).

Both bills allow states great flexibility in exercising controls over decisions which the <u>states</u> decide fall into the above four areas. The Interior Department is the mutually agreed to line agency to issue the grant program, although slight differences over the exact administrative process remain.

In his 1973 Environmental Message to Congress, President Nixon called the legislation to stimulate state land use controls as his

number one environmental priority. He especially requested enactment of a National Land Use Policy Act authorizing Federal assistance to encourage the states, in cooperation with local governments, to protect lands of critical environmental concern. He also called for the withholding of appropriate federal funds should states fail to act (47).

In summary, it can be assumed that the National Land Use Policy, scheduled to receive Congressional approval by this Fall (1973) (48), will among other things:

(1) provide national direction and coordination for the various federal programs dealing with land use;

(2) provide federal funding to assist states in the development of state-wide land use plans and planning processes with application and emphasis on areas of "more than local concern," and primarily on environmental problems and protection;

(3) offer state-wide latitude in the type of plan and method of implementation, with federal review directed at the state's capability to implement the program, rather than on judgment of the substance of each program (49); and

(4) provide for some type of economic sanction for non-compliance. Although the Senate removed sanctions from the version it passed last year by a voice vote, both Jackson and the administration are convinced that economic sanctions as well as state grants are necessary.

CHAPTER III

STATES' ROLE IN LAND USE

> The federal legislation recognizes the weaknesses of locally applied controls and institutions. However, it (the legislation) could not require radical or sweeping changes in the traditional relationships and responsibilities of local government for land use management. . . neither could it suggest Federal zoning, which is both unwise and unconstitutional.
>
> Senator Henry Jackson

Basis of State Land Use Responsibility

A glance at the federal land use policy reveals that states are the "keystones" in the development of an effective program to guide growth. Federal funds will be allocated to states. With these grants, a state is to establish a state-wide planning process. It is to include adoption of a state-wide plan and programs to implement the plan. The plan focuses on four categories of critical areas, with states free to determine the degree of local control and involvement in the process.

States have been selected as the vehicles to translate the rhetoric of a national policy into effective action. While the state's personal role might be clear as to what is required for obtaining federal funds, the state's intergovernmental role is vague. The policy fails to articulate how states are to transform the policy into effective programs. The federal government has done little more than to hand the ball over to the states, and direct them toward the goal line. Exactly how the states are to reach that goal is up to their own

ingenuity and resourcefulness.

This lack of Federal guidance for states to carry out a particular policy is not an oversight on the part of the Nixon Administration or Congress. It can be classified as a typical example of the "New Federalism," an attempt to reverse the trend of an expanding federal bureaucracy. It seeks to return various responsibilities to the state level of government where, in the mind of the Nixon Administration, they should ultimately reside.

This effort is in marked contrast to the gradual assumption of functions by the central government, characteristic of nearly all administrations since Franklin Roosevelt's "New Deal." An exception to this trend was an attempt to revitalize the states' role in the federal process during the Eisenhower years (50). Although this effort was relatively unsuccessful in accomplishing any noticeable revision, it was credited with stimulating interest among states to develop a greater sense of interstate cooperation and responsibility. Such organizations as the National Governors' Conference, Advisory Commission on Intergovernmental Relations, the Congressional Subcommittee on Intergovernmental Relations, States Urban Action Center, Council of State Governments, and the Institute of State Programming for the Seventies are outgrowths of this reawakening of state responsibility (51).

Nixon's "New Federalism" is designed to reduce the administrative duplication and overlap of functions and services; develop and strengthen intergovernmental cooperation and responsibility; and provide for state

governments the opportunity to become viable units of the federal political process. If this is kept in mind, the apparent voids in the federal land use legislation are seen not as oversights. Rather, they act as artificial stimuli to state action.

Congressional inclination to defer to the states in matters related to land use can also be substantiated on two other grounds. First, states according to the Constitution, are the only level which possesses the important "tools" and authority for developing an effective program, coordinating land use planning and control. Second, state governments are in a strategic position to best implement an effective program.

The basic tools which all states possess emanate from three inherent powers. These are: (1) the police power; (2) the power of eminent domain; and (3) the power of taxation. Both federal and local levels employ these "powers," but not to the potential degree of the states.

The Federal Government's police power is limited to lands owned by the Federal Government itself. Its power to tax is strictly limited by the Constitution. The power of eminent domain while supreme to that of the states is restrained by an inherent American scorn for the "nationalization" of private lands. Local governments have no inherent powers. They rely completely on powers transferred by the states through state enabling acts, municipal corporate charters, home rule legislation.

On the contrary, the state governments enjoy jurisdiction over all lands within the state, public and private (except for federally

owned) lands. States have unlimited taxing power. Their police power is justifiable under any condition that can even remotely be traced to the public's welfare. The power of eminent domain, while limited by the fiscal capacity of the state, has become more flexible through a wider application as interpreted by the courts and the use of more sophisticated techniques (52).

Historical Development of Land Use Controls

Governments in the United States have been reluctant to interfere with the sacred right of private property. The bulk of land use controls in evidence during the first two centuries of development were voluntary in nature. Restrictions on deeds, normally contractual agreements between the buyer and seller, were the major limitations placed on privately owned land. There were ordinances passed by state legislatures from time to time which placed restrictions on the use of the land. These were extremely uncommon and rarely enforced (53).

The first settlers in America brought two basic concepts which affected man's relationship with the land. The first was the theory that man could do whatever he wanted with his private land. The second was the English Common Law, which governed man in society and recognized the importance and the responsibilities of owning property. It included doctrines dealing with anti-social issues such as trespass and negligence. Under these doctrines, legislative bodies could restrict the use of private property when a private act resulted in a "nuisance" to the interest of the general public. However, in colonial America, land was abundant and the sanctity of private property was so ingrained

that there appeared little need to restrict the private use on land.

America had been founded by individuals who had sought to subjugate the land, not respect it (54). This view was in marked contrast to the situation in the Old World and caught the attention of Alexis de Tocqueville, who referred to this point in his commentaries on American life in the 1830's. He observed that, in America, land was abundant and labor scarce. This condition was just the opposite of France and England. He praised the vastness of the American continent and indicated that such a "boundless land" provided a basis for tremendous strength and future potential (55).

By the end of the Nineteenth Century, the theory of a boundless continent was lost in the congestion and confinement of urbanizing America. Resulting from a variety of social and economic forces, this massive urbanization compacted living conditions and brought demands upon local governments to exercise their positions of responsibility to remedy unhealthy situations.

Municipal governments reacted to the demands for action. As creatures of the state, they employed the state's police power, that authority to take such action as is necessary and constitutionally permissible to protect public health, safety, morals and welfare. Under the rubric of protecting public health, city councils identified "nuisance uses" and defined districts within urban areas where certain uses were not allowed (56). In the 1880's San Francisco and Los Angeles limited the location of laundries. Height restrictions were first placed on buildings in Washington, D. C. in 1889 and in 1909

Boston's height regulations were upheld by the U. S. Supreme Court. Cities enacted fire district ordinances prohibiting the building of wooden structures, and by the early 1900's, many cities and some states had enacted laws restricting tenement lot coverage (57).

> The bulk of the early efforts at restricting landuse in the larger urban areas were generated to protect residential and high class business areas from encroachment by industry and the tenements. The restrictions were usually justified as being necessary to protect controlled areas from potential fire danger and health hazards, but in reality, it was probably more of a concern for property values (58).

The legality of such infringement on private property served to distinguish between the police power, and the power of eminent domain. The power of eminent domain allowed the state to take any private land provided the proposed use was a public purpose, and the owner paid just compensation. The police power allowed the government to regulate the use of private land when such use adversely affected the well being of the community. No compensation was paid to the owner whose land was so regulated.

The question, which the court had to settle, was whether local governments could "zone" land and thereby restrict the use of private property without just compensation. Did not such action by the local government's acting in the place of the states result in a denial of "due process," as guaranteed to citizens under the Fourteenth Amendment to the Constitution?

Between 1900 and 1926, district and state courts batted the issue back and forth, while more and more cities enacted "zoning ordinances" as a device to control the use of the land. Finally, in

1926, in the monumental case of Village of Euclid v. Ambler Realty Company, the United States Supreme Court upheld the power to zone as a legitimate use of the police power. What made Euclid significant was the fact that the court went beyond the traditional reliance on the findings of "nuisance" to justify the ordinance.

Euclid involved the creation of exclusive residential districts from which apartments were banned. Earlier court decisions, concerning nuisance findings, were based on externally applied, objective criteria. With this decision, the court legitimized the use of value judgments concerning what is orderly and proper development, in essence, the principle upon which "zoning" is based (59). It further established all the heirarchy of land uses and the ability of municipalities to control these uses.

In its ruling the court said:

> States are the legal repository of police power. An enabling act for zoning is the grant of power to a municipality for regulating the height, area and use of buildings, and the use of the land. In the exercise of this grant, the regulations must be reasonable and not arbitrary or discriminatory. They must have substantial relation to the health, safety, morals, comfort, convenience and welfare of the community (60).

With this decision, a new chapter in land use controls began. The use of voluntary land use controls surrendered to governmentally applied devices. Municipalities were handed land control "tools" by states unwilling to exercise their inherent powers in this area. State governments saw land use matters as primarily local in nature. Since local governmental were closest to the issue, they were seen as being in the best position to deal effectively with the matter.

Local governments, with the encouragement of state and federal agencies employed a series of "state" powers against the wave of population growth and urbanization (61). The need was primarily to control unplanned development which drained the already limited tax revenues. Cities believed that by building up a wall of controls, land use conflicts could be isolated or at least contained within the manageable capabilities of municipal governments.

Cities used zoning ordinances, planning commissions empowered with subdivision control capabilities, extra-territorial jurisdiction, health ordinances, and other less overt devices in a futile attempt to maintain a desirable quality of life for its residents. The situation soon became hopeless. Urban problems enlarged into metropolitan problems. The complexities of the issues rapidly surpassed the physical capacity of local governments to act effectively. It was not that the "tools" were toally ineffective, but rather that the problems outstripped the level of government employing the "tools."

States and the Federal System

States from the outset of the land use issue have accepted the view that it was a matter to be handled by local units. Public control of land was one of the most "local of functions" in the American federal system. States chose to hand controls to local governments through enabling statutes, generally permissive in nature (62). To understand this reluctance is basically to review the development of the federal system in America.

As originally designed, states were to be an equal partner in a Federal System of Government. To insure this feature, concepts of "dual sovereignty" and "shared powers" were discussed by the delegates to the Constitutional convention in 1787. They had suffered under both a domineering centralist regime and an ineffective confederacy of states, and sought a better solution. A "Federal System" was their answer.

As things developed, states became anything but equal partners. Center stage was gradually captured by the national government with the assistance of strong Federalists that came to power in 1789. Men like Alexander Hamilton, George Washington, John Adams, John Jay and John Marshall played a major role in establishing the dominant position of the national government.

States themselves can be partially faulted for their relegation to a lesser role. They backed themselves into a corner through their internal bickering and failure to resolve intrastate disputes and interstate jealousies.

The state legislatures were extremely parochial in outlook and their membership was relatively inexperienced in governing. In 1790, 19 out of 20 Americans were farmers, who by nature, are an independent, self-sufficient group (63). Yet, it was this group that shouldered the responsibility of developing a viable political framework at the state level, while the more capable and politically astute state leaders were drawn to Washington. Another matter which hindered early development was that states, like the Federal Government, were financially

destitute. The Federal Treasury was soon improved by nationally imposed tariffs and other levies under the skilled leadership of Treasury Secretary Hamilton. States, on the other hand, were forced to beg and borrow from citizens generally reluctant to submit to state taxes.

The proper role for states in the new government had been a hotly contested issue during the Convention. In fact, James Madison was so fearful of states reasserting the independence and sovereignty, which they openly flaunted during the period of the Articles of Confederation, that he devoted much time, unsuccessfully seeking a solution. Throughout several of the Federalist Papers, he addressed the subject of state sovereignty and the anticipated difficulty which the national government would face in enforcing mandates on the governments of the member states (64).

This struggle for supremacy between the central government and the states did not end with the adoption for the Constitution. From 1789 to 1865, this issue was the source of continuing debate, finally culminating in open rebellion.

One of the earliest attempts by states to visibly assert their sovereignty was the Virginia and Kentucky Resolutions in 1798. These "Resolves" declared that states could resist enforcing federal acts which state legislatures deemed unconstitutional. In 1814, the Hartford Convention, composed of delegates from the mercantile New England states discussed among other "rebellious steps" the possibility of secession from the union if the old Embargo Act of 1807 was reinstituted. Later, other states took action to control nationally chartered banks. Ohio

not only seized the National bank, but the bank's money as well.

The specific examples of states attempting to assert various "implied rights" are numerous. Overriding all of these state attempts to assert "implied rights" was the ominous presence of the United States Supreme Court which of the three branches of the Federal Government has traditionally been the strongest advocate of national supremacy. Through a continuing series of cases, the Court established its authority to interpret the Constitution, and then laid down rulings which served to expand the Federal Government's authority.

Following the Civil War, any supremacy claims which states still believed they held were removed by the passage of the Fourteenth Amendment. This amendment indicated that state laws were subject to Federal judicial review. While the full impact of this amendment would not be felt for several decades, the last remnants of state supremacy ceased to exist.

During the post Civil War Reconstruction Period, the Federal Government expanded its efforts. It became involved in agriculture and education, strengthened the banking community, the court system, and the judicial process. The state governments, on the other hand, were reduced to dealing with principally social justice and welfare matters. When states sought to regulate private industry the Supreme Court denied the states such authority (65). By the close of the 19th Century, cities were emerging to fill the governmental vacuum created by politically weakened state governments and the politically aloof

Federal Government. A "Golden Age of Cities" dawned and provided a new perspective to the Federal System (66).

This rise in the importance of cities did not develop overnight. From the 1880's on, cities experienced a tremendous influx in population, resulting from waves of immigrants, and the industrial and agricultural revolutions which caused people to shift from rural to urban areas. City governments became the focal point of public attention and experienced a tremendous increase in demand for services. In response to cries for assistance, states gladly extended certain inherent powers to the municipal level governments but then turned a deaf ear to their later needs (67).

During this period, two great nationalizing forces occurred. These were the passage of the Income Tax Amendment (1913) and the Great Depression (1930). The former gave the Federal Government the capability to act, and the latter provided the opportunity to act. As a result of these two forces, the Federal Government worked its way into every facet of American life.

Through the use of federal grants-in-aid, state and local governments were offered a new lease on life. The complex issues that plagued these governments could now be tackled through cooperation by all levels of government. The Federal Government, by greatly expanding and centalizing its own power, brought state and local governments to the realization that issues needed to be addressed. They offered the federal dollar as a stimulus to state and local action. Congress, initially through grants-in-aid, and more recently through revenue sharing, provided states

and local governments with the means to affect change.

There were other issues which caused change. One of the more significant was the Supreme Court case of Baker v. Carr. This 1962 decision called for the reapportionment of state legislatures to accurately reflect rural and urban populations. The decision unglued the strong rural flavor which most state legislatures had and caused a major alteration in the legislatures' attitudes and approaches to various problems.

Local matters were recognized to be state-wide. Urban caucuses and coalitions in state assemblies brought state attention to the need to deal with compelling metropolitan difficulties. Interstate ventures were undertaken. Advisory commissions on problems affecting all states were established. Governors from various regions sat down together for the first time to discuss mutual problems. State legislatures updated archaic charters and constitutions. State governments reorganized to offer more effective and efficient frameworks for meeting public needs.

States have come to realize that they are a strategic level of government. Being closer to most problems than the Federal Government, they are able to mold their attack on a pressing issue to the unique attributes of the state. States have more detailed knowledge of resource needs and are better equipped than their federal partners to perform actual planning and management tasks. With smaller bureaucracies, they can be more flexible and responsive. They are in a better position to both coordinate and trade off various interrelated issues than the sprawling federal bureaucracy.

Local governments lack both the legal authority and the geographic perspective to view problems on a large enough scale to be effective. Local governments can not take advantage of their position to employ economies of scale in planning, construction of facilities and management techniques such as states are capable of doing. In addition, states do not suffer from the same ills which plague local officials, namely the pressures to raise revenues, and the susceptibility to powerful political and economic interests (68).

It is gradually becoming accepted that states represent the level that is most appropriate to develop and administer a program dealing with land use. Institutions and tradition recognize that local governments are the preferred level to deal with land use conflicts. This apparent impasse of what seems best versus what the public has traditionally accepted, is the dilemma which must be resolved. This will take time.

CHAPTER IV

STATE ACTIVITY IN LAND USE

> Let us tell the developer and let us tell the rest of the country right here and now that Vermont is not for sale.
>
> Governor Thomas P. Salmon

Reasons for State Action

It could be argued, and with some degree of success, that the political process does not always proceed in a predictable manner. Land use is certainly no exception. What might appear on the surface to be a sudden radical assertion of state power to regulate some aspect of land use will, on closer inspection, reveal a gradual evolution which culminated in the state finally passing legislation and thereby formalizing a control program.

This is not an attempt to underplay the efforts of certain state legislators. Without their lead, there would have been little acknowledgement of the unhealthy situation in land use, nor the demand for Congressional attention. Much can be learned about the political process by examining states that have taken the initiative in various land regulatory programs.

It has not been uncommon for states to play the role of innovators for various types of social welfare, health, educational and environmental legislation (69). The recent efforts by states in land use is seen as an

extension of this role. States initiate action, publicize a problem, propose a satisfactory solution and then watch the Federal Government execute their scheme on a nation-wide scale. It is not an unfamiliar pattern.

The Federal Government cannot devise and apply different standards from state to state, and yet for many services, different standards would be appropriate. Land use control falls into this category. Diversity in performance is necessary because needs and capabilities of each state are diverse. The contrasts and variations found in the state land use programs support the need for broad, flexible guidelines at the national policy level. The similarities, on the other hand, allow for the development of certain basic features which state programs should incorporate if they are to be effective.

There has been so much written to date about the specifics of the various state plans that to deal with them in any detail would simply restate already familiar points. Similarly, to attempt an inventory of current state alternatives would result in a compilation which would be out of date before being completed. The amount of activity at the state level in land use related matters is phenomenal, and the speed at which the concept is catching hold challenges the imagination (70).

Instead of either of these approaches, several state land use control plans have been selected and briefly summarized to acquaint the reader with the broad issues. This approach will allow a better understanding of the overall political process and the unique contributions which the separate experiences offer.

The recent interest in state imposed regulation of various land areas is attributable to the following:

(1) public opinion is generally in support of state action, provided it is limited in its application to an issue of state-wide "critical" or "vital" concern (71);

(2) previous state efforts have proven to be generally satisfactory in arresting a particular problem (urban sprawl, protection of unique features, prevention of unwanted types of development), (72) and;

(3) citizen growing awareness of and involvement in the urban, environmental, energy and other "crises" have brought pressure upon states to take action to prevent any further degradation of the natural resources or the quality of life (73).

The cause for the earlier (pre-1972) land use control activity undertaken by states can be attributed to primarily one reason. This was the need to react to a "crisis" situation, a clearly recognized problem beyond the control capability of local governments and affecting the well-being of all of the state's citizens (74).

The crisis was generally environmentally oriented. It stirred up enough public pressure to force state legislators to act often as a last resort. In Maine, Hawaii and Vermont, for example, it was the pressure of second home development. In Florida, it was in response to water shortages which plagued the southern part of the state in both 1970 and 1971. In Colorado, it was the realization that the state had no anti-development controls in the mountains near Denver, the proposed site of

the 1976 Olympics. The specific reasons might have differed but the control program was always in response to a particular problem which had gradually developed into a "crisis."

Attempts have been made to categorize these earlier alternative plans under general headings (75). This resulted in wasted effort. Each approach was too unique and defied a "lumping of alternatives." However, there is little disagreement as to which states are considered the leaders in initiating the various land control techniques. All lists include at least the following:

Hawaii (1961)

Massachusetts (1963)

Wisconsin (1965)

Maine (1969)

Colorado (1970)

Vermont (1970)

Selected State Land Control Programs

Hawaii

In 1961, the Hawaii State Legislature passed a State Land Use Law. In principle, the law set up a nine member State Land Use Commission, which proceeded to divide the state into four land use categories: urban, agricultural, conservation and rural. The latter designation was added in 1963 and in actuality, the rural designated areas are as rare as the buildable land on Oahu.

Urban districts were designated as those lands already urbanized and a reserve of land sufficient to accommodate urban growth for the

next ten years. Rural districts were areas of low density, or of semi-rural nature, on lots of at least one-half acre. Agricultural districts included both crop and grazing areas plus sugar mills and other industrial activities typically associated with Hawaiian agriculture. The designation was based on land currently used (1963) or unsuitable for any other purpose. Conservation districts comprised primarily all the state owned forest and water reserve zones (76).

The initial boundaries were established in 1964. Uses permitted in urban districts were made subject to the county zoning regulations. However, in the other three categories, land could only be used in accordance with the regulations of the state, through action by the Land Use Commission or the Department of Land and Natural Resources. This latter state agency controlled uses only in "conservation" designated areas. All revisions of district boundaries or variances within districts are under the control of the Commission (except in those special instances mentioned earlier).

HAWAII STATE AGENCIES INVOLVED IN LAND USE CONTROLS (77)

Governor

Land Use Commission	Dept. of Planning & Economic Level	Dept. of Land & Nat'l Resource	Board of Land and Natural Resources
Sets district bounds Passes on special permits in rural and agricultural districts	Provides staff for Land Use Commission. Director serves as Commission member.	Provides staff for Board of Land and Natural Resources. Chairman serves as member of that Board and also as member of Land Use Commission.	Passes on permits for use of land in conservation districts.

The success of this effort is debatable. Generally, however, the comments are laudatory. The battle for the few remaining parcels of land in the urban category naturally forces land values sky high. Housing costs in Hawaii are more than double the national average, but under such a plan the islands have managed to protect the valuable scenic and historic environment (78).

While the measures taken in Hawaii, on the surface, seem quite drastic, in the proper context, these measures can be explained. Hawaii, until 1959, was a territory of the United States. It was governed by a central authority, the territorial governor. Equally as significant are the hundreds of years prior to foreign involvement that the Hawaiian people spent under the reins of a Polynesian-type feudalism. The country and the people have never enjoyed a tradition of local autonomy, county level administration, home rule experience, common law principles, or any of the other institutions common to the contiguous forty-eight states.

It should also be noted that in the early sixties, Hawaii was a land largely controlled and influenced by agricultural interests, primarily pineapple and sugar cane growers. When the territory was granted statehood, waves of tourists, with their desire for second homes, flocked to the islands. This increase in population posed a direct threat to the rich agricultural lands which stood in the path of the urban sprawl around Honolulu.

The devastation was obvious even to the casual observer. Citizens called for state efforts to protect the central Oahu Valley

from the development sprawl eminating out from Honolulu. The large, influential agricultural interests, conservationists, and residents saw governmental regulation to be in their best interest. With little organized opposition, the Land Use Act was approved (79).

Hawaii's alternative is of marginal value in terms of its potential for application to other states. The unique features behind the development of the Hawaii scheme (the tradition of central authority, the unique geographic situation, and the influence wielded by conservation and agricultural groups) are uncommon to most other states. The Hawaii Plan is most important in that it was the innovator in state instituted land control programs. At the same time, the program points out weaknesses which other states should avoid.

One of the most serious flaws is the lack of coordination which exists between the Land Use Commission and the State Planning Agency. There is a similar gulf between state and county administrative levels. Another major weakness is the state's failure to adopt a comprehensive land use plan to provide a basis for Commission decisions related to land use. A third shortcoming is that there has been neither an updating nor clear re-definition of state policies to guide land use programs. The result is that few people are satisfied. Developers complain that not enough land is made available, and conservationists argue the Commission has allowed too much land to be developed. Without an overall plan to guide decisions or provide a frame of reference, the popular objections would seem to have validity.

Commission decisions on rezoning matters have generally been very slow. This causes additional adverse comment. Another complaint is based on the Commission's use of an "incremental" approval policy, employed when considering major developments or subdivisions. Developers receive approval for a portion of their plan. Following the installation of improvements (water, sewer, streets) in this approved portion, the Commission inspects conditions. A developer who is proceeding in accordance with the plan is then granted the rezoning on the remainder of his plan.

Vermont

State zoning, as accomplished by Hawaii in 1961, would be a difficult thing to have adopted in Vermont. However, an effective land control program has been achieved in this New England state, whose people have a tradition of strong local governments and a deep respect for the land.

Vermont's land use control program somewhat paralleled Hawaii's, at least during its formative years. The state, for a number of years, witnessed the destruction of its natural beauty by developers capitalizing on the demand for second homes. The demand was a result of a series of events: the rapid increase in skiing activity, an improved interstate system, and the state's "quaintness" located within a few hours drive of major urban complexes. The destruction was state-wide and too blatant to avoid (80).

Vermont, like Hawaii, needed an immediate solution to what was primarily an environmental matter. It recognized the long term social

and economic impact which unchecked development would have on the state. Vermonters disliked competing with "out of staters" for land. They liked neither serving as a suburban playground for the Northeast, (81) nor did they like the sky-rocketing land prices and soaring property taxes resulting from the booming second home industry. In the last five years, the average Vermont acre has jumped from $200 to $500; near ski areas, the price has approached $2,000 per acre (82).

The Vermont legislature reacted to public demand for action with the creation of an Environmental Control Commission in 1969. The Commission proposed a solution to deal with not only the immediate, but also the long range issues. Their solution became known as "Act 250," the "Environmental Control Law." With bi-partisan support and at the strong urging of Governor Deane Davis, the bill was passed during the 1970 legislative session.

Under "Act 250" the state established an Environmental Control Board and divided the state into seven regions with seven Regional Commissions. In addition, it established a formal state review and permit process for major residential, commercial and industrial development. Smaller development (under 10 acres, or less than 10 housing units) was subject to the local government's traditional control apparatus, primarily zoning and subdivision regulations.

The process included initial review of development plans by various state agencies, followed by a second review at the district level by the District Commission controlling the geographic area where construction was to occur. This district review included a

public hearing and relied on input from local and regional planning commissions. The decision was made by the District Commissions, composed of Governor-appointed residents. However, an appeal could be made to the State Environmental Board, which established the developmental and environmental criteria to govern district level decisions.

The Act provided for adoption of a state-wide land use plan to guide growth and the decision making process. The plan was a three-step process. The first step was creation of an interim plan. The Interim Plan inventoried present land use and available resources. In May of 1973, the state approved the second step toward the development of the final land use plan. This second step was the adoption of a Capability and Development Plan.

This second phase was approved with very little difficulty, 121-26 in the House and with only token opposition in the Senate (83). The vote was significant. It indicated the success of the program to date and demonstrated that a process which gradually evolves and is clearly understood receives widespread support. Public and local governmental support is important for effective implementation and enforcement of any program. To insure popular support for this second phase, the State Planning Office undertook a massive publicity campaign, informing all residents of the state exactly what was included in the plan and what it meant to each citizen.

The Capability and Development Plan is divided into two parts. The first section includes nineteen policy statements relating to

various aspects of development. It provides a framework for the state-wide land use plan, as well as any regional or local plans. The second section includes a long list of criteria amendments to "Act 250" (1970). These amendments establish ground rules under which the Environmental District Commission could base the granting of permits for development. (For example, one area of emphasis is the rate of construction and size of a development. The criteria indicates that development proposals under consideration by the District Commission must conform or be judged against a capital improvements program at the municipal level.)

The final stage called for by "Act 250" will be the adoption of the "Land Use Plan." The "Plan" will actually be a map defining the specific uses allowed in various areas. It will be used in conjunction with the Capability and Development Plan and will provide the state with a long range strategy and a basis for a rational decision making process on land use matters.

This final phase (The Land Use Plan) is scheduled to be brought before the legislature next January (1974). When approved, the state will have developed, through a sequence of planned stages, an effective land use control program which allows for local-regional and state interaction and cooperation.

If there is any noticeable weakness in the strategy, it might be the preoccupation with the environmental aspects of land use. This is only natural, since this aspect was the most visable and immediate threat in the eyes of the public (84). However, the state

does have the tools for acting in land use matters which concern social and economic values. To date, the state has not attempted to use them.

> Although development permits are based more on environmental performance criteria at present, this should change in years to come, and reflect more concern for the more long range aspects of land use, the important social and economic matters (85).

Maine

The threat in the case of Maine was from two directions. The first crisis occurred when it was realized that certain large oil companies were interested in the state's deep water ports as a location for the offloading of oil from their jumbo tankers, and construction of refineries to process oil. The second threat came from the influx of tourists and the demand for second homes. The problem was that unlike Vermont and some of its sister New England states, Maine did not have a strong tradition of local zoning. In many cases, local communities had no land control ordinances and were powerless to check the anticipated industrial and residential development.

In 1970, the state reacted to the problem by passing a Site Location Law which required large commercial and industrial developments (later expanded to include residential subdivision in excess of 20 acres) to obtain permits from a State Environmental Improvement Commission (86). (The majority of this Commission's workload has been the regulation of residential construction activity, following the denial of one oil company's proposed development plan in 1971.)

Maine's initial reaction was the creation of the typical, single-purpose, stop gap approach. It was void of any planning process. Decisions were based on immediate needs and considerations. Efforts

were made to encourage better quality in the development of residential units, with certain limitations placed on the use of septic tanks. However, since the law mentioned few criteria and failed to provide for a land use plan, the program hinged totally on ad hoc decisions. Its future success was doubtful. The enforcement mechanism was weak. The intergovernmental cooperation was non-existent. Such a format might have worked in Hawaii, where there was a strong element of centralization, but in Maine, this was not the case.

In Maine's program there was no reference to local zoning and no incentive for local land use controls. The state was allowed very little state control over land development and it failed to imply Vermont's state commitment to local zoning. This was the result of a common belief among Maine residents that local governing bodies would always be biased in favor of local developers in order to boost local tax revenues and generate local employment. Therefore, a far wiser approach than Vermont's encouragement of local zoning seemed the expansion by increments of the state's control to smaller and smaller development (87).

In 1971, Maine launched out in this effort to strengthen its control mechanism by passing two acts. The first act required mandatory zoning and subdivision control for shoreland areas. The second act extended the jurisdiction of Maine's Land Use Regulation Commission to plan and regulate the use of land in the "unorganized areas of the state" (88). This latter development followed on the heels of an administrative reorganization effort which resulted in the creation

of one Department of Environmental Protection which combined all environmentally oriented agencies (including the Environmental Improvement Commission).

Patterned somewhat after Hawaii's land classification system, Maine empowered its Land Use Regulation Commission to classify lands into protection, management, development and holding districts. Some thought is now being given to sub-dividing the major districts and establishing regulations and land use guidance standards for each district (89). Under the plan, boundaries and regulations could be amended, public hearings were provided for, and a comprehensive review of the districts was to be made every two years.

As a result of these three pieces of state legislation, the state is developing a viable, effective program to control land use. The acts were policy statements which indicated that the state would assume final and complete authority for guidance and control over land and water within its boundaries (90). The state has yet to enact a comprehensive state land use plan to guide the implementation of these acts, but like Vermont, is taking gradual steps to develop a plan over a period of time.

Maine seems to have taken a little from Hawaii, and a little from Vermont. Its timetable for developing a state process for implementing a partially complete land control program has been comparatively rapid, yet the sequential aspect has not been sacrificed. Maine, like Hawaii, has failed to develop either a comprehensive plan or coordination between the state planning effort and the state land

use commission.

Maine's greatest hurdle to an effective state land use program seems to be its traditional absence of state involvement and local governments's reluctance in implementing a land control mechanism. This can only be surmounted by gradually developing this capability at both the state and local levels. Maine has taken the important first steps and presently is flirting with the development of a state land use plan. However, until the state develops a cooperative, intergovernmental effort, it must be content to tread water.

Massachusetts

The "Bay State" has taken two significant strides in developing state controls. In 1963, the state became the first to adopt state-wide "critical area" controls. Protection was directed at the state's important coastal and inland wetland areas.

More importantly, from the standpoint of innovative techniques, the state has also taken the initiative in state-wide controls dealing with a particular social aspect of the land use issue, low income housing. The Massachusetts "Zoning Appeals Law," passed in 1969, allowed the State Housing Appeals Committee to override local decisions related to housing development when such decisions are not deemed "reasonable and consistent with local needs" (91).

Under the law, developers of low income housing apply to local zoning appeals board for a "comprehensive permit" in lieu of permits normally required by local officials. If denial of the permit occurs, the developer can appeal the local decision to the state. The state

determines the low income housing needs of the community by means of a quota system which relates existing low income units to total housing units in the town (92).

There are certain issues which need to be resolved before the process can be effectively implemented. These include: (1) the issue of legality in granting zoning authority to a state committee; (2) the unfair burden to the developer to prepare the necessary plans and paper work before obtaining zoning approval; (3) the state's role subsequent to construction of units; (4) the practicality of developing a state-wide housing program around an adjudicatory permit process (93).

The Massachusetts Zoning Appeals Law may or may not provide a model text for nationwide use (94). What it has provided is the first real case history of a special permit process sanctioned by the state and responding to state-level interests (95).

Florida

Florida's land use control package is significant because it represents the first state to implement the basic ingredients of the Model Land Development code as developed by the American Law Institute (A.L.I.). While it is yet too early to assess the success of the state's effort, it provides a working example of the Institute's model legislation.

Florida launched its effort with the passage of the "Environmental Land and Water Management Act of 1972." It placed the state in a position to exercise a limited degree of control over land development in the state, and preserved the processes of local government agencies and

rights of private landowners (96).

The role of the state focused on land use decisions which had a substantial impact outside the boundaries of the local government in which the land was located. Paralleling the A.L.I. code, and to some extent, the proposed national land use legislation, the state (actually the Governor and Cabinet) was empowered to designate specific geographical areas as "areas of critical state concern" and to establish principles to guide development in each of these areas (97).

After an area was designated, the local governmental agency having jurisdiction was given an opportunity to submit land development regulations for the area in accord with the principles enunciated by the state. Should the local governmental agency involved fail to submit its regulations within six months from the day the area was designated, or the regulations were determined by the states to be inadequate, the Division of State Planning was empowered to develop regulations. The state would then impose these regulations on the local government. In either case, the regulations once adopted or approved by the states were to be administered by the local government.

The state also adopted guidelines and standards to determine whether certain kinds of land development activity should be treated as "developments having regional impact" (98). Any development treated as "development of regional impact" required the preparation of a report subject to recommendations by the appropriate regional planning agency. A public hearing was to be held by the local government in whose jurisdiction the development was proposed. To date, the list of

"developments having regional impact" includes airports, attractions and recreational facilities, electric generating facilities and transmission lines, hospitals, industrial plants and parks, mining operations, office parks, petroleum storage facilities, port facilities, residential developments, schools and shopping centers (99).

One other feature worthy of special mention is the process whereby any decision reached by local governments concerning development in an area of "critical state concern" or a proposed project having "regional impact," may be appealed directly to the state for rehearing. In essence, the state has the right to overturn the decision of a local governmental agency provided that decision was made with respect to development in an area of "critical state concern" or a proposed development of "regional impact."

Florida's situation is somewhat unique in that it experienced a rather sudden extension of state authority in the field of land use controls. The passage of one act changed overnight the traditional process of development within the state. The success of such a rapid transformation has not yet been proven. In fact, the state legislature is having second thoughts about its rather generous action of last year. The state, as a result, currently has its hands full simply trying to keep the program intact in the face of a "backlash by the state legislature" (100). The state has extended broad authority and the administrative machinery has considerable catching up to do (101). Whether the extension of this state authority was too rapid remains to be substantiated. This apparent haste in establishing the program

may have hindered its overall effectiveness.

The state program does call for a strong cooperative link between local and state governments, but as in most cases, the state had no strong tradition of interaction upon which to build. The plan provides for a "comprehensive capability," enabling the state to intervene into various social and economic related areas, as provided under the classification of "areas of regional impact." However, the program is strongly weighed in terms of physical development and environmental protection.

Over time, it is anticipated that the state will develop a capability to intervene strategically in those economic and social issues having state and regional interest (102). For the present, the state is having trouble simply developing the mechanism to get the program underway, and obtaining the legislative and local level support for effective implementation and enforcement.

Wisconsin

Wisconsin, like Massachusetts, was one of the pioneers in land control efforts. In their case, the area of critical concern requiring state action was the shoreland.

The state's concern resulted in the passage of the Water Resources Act adopted by the state legislature on August 1, 1966 (103). It contained an innovative device for developing joint county-state action to curb abuses of shoreland areas. It removed the power to regulate land use along lakeshores and within flood plains from town boards and gave it to the counties (104). Special county regulations were then

applied to specific geographic limits adjacent to navigable waters. The counties, with their broader perspective on land use and development, would carry out state standards designed to improve the deteriorating water quantity conditions and promote sound development of the adjacent upland areas (105).

Under the Wisconsin program, the state gradually assumed a more active role in county shoreland regulations. Initially, the State Department of Natural Resources prepared standards and criteria which county ordinances had to meet. Later, if counties failed to comply, the state itself acted to protect the shorelands. The threat of state intervention and the recognized need for action by the counties resulted in state-wide compliance with the act (106).

From the start, the Department felt that while direct state action might have expedited the county's acceptance, the best enforcement would result only if counties were allowed to draft and enact their own ordinances. As a result of the Shoreland Management Program: (1) all counties established a viable institutional arrangement for planning, and (2) county sanitary regulations and subdivisions ordinances were strengthened.

The most valuable contribution of this program has yet to be realized. Since the mid-1960's, through a working relationship between state and local (county) governments, a state-wide organization of effective decision making bodies has gradually developed. The state action molded these units into an effective organization and now can use these local elements in expanded efforts at controlling or

regulating undesirable conditions affecting other areas of the state. A Land Resources Committee appointed by Governor Pat Lucey in 1972 indicated that "an area of state-wide concern was the lack of control over such items of regional benefit as large scale land development" (107).

The State of Wisconsin has developed a mechanism for dealing with state-wide problems and is now in a position to use this mechanism effectively. It is an example of the way certain far-sighted states have expanded their efforts to control undesirable land uses and growth through a sequence of planned policies and programs. The state currently lacks a comprehensive land use program and there is no reliance on an approved land use plan. These gaps are not insurmountable when a program includes the important aspect of intergovernmental cooperation.

Colorado

Colorado's approach was based on an attitude that the state should shoulder responsibility for land use and not wait for local governments. Its response was the formation of a Land Use Commission in 1970 (108). This Commission was granted temporary emergency power over land development activities and authorized to prepare subdivision regulations in counties where no regulations existed.

The state did not want to remove the power of local government to regulate development. It did want to insure that where the local governments had not acted (especially in areas near the scheduled site for the 1976 Olympics) controls over development would be in force.

The Commission promulgated "emergency" ordinances which would remain until local officials adopted regulations of at least equal standards. (Oregon had earlier employed this tactic, but in addition vested the state with temporary planning and zoning responsibility (109).

When voters turned down the referendum concerning the state's playing host to the Winter Olympics, the anticipated development boom failed to materialize to the degree anticipated. The result was that the Commission's authority to supercede local authority and enjoin a developer, when it appeared that his development would result in severe damage to the environment, has been exercised very rarely since 1971.

In 1972, the legislature approved a measure which beefed up county subdivision controls. This action seemed to be an exception to the "backlash" that set in, following the creation of the Commission over two years ago. The state assembly had continually rejected efforts to expand the state's control capability. It voted down an attempt to establish an Industrial Site Selection bill (similar to Maine's) and later a plan to develop a regional planning capability throughout the state.

The Commission has been able to develop some initial guidelines and policies on an interim basis. However, the present effort (Senate Bill 377) which would create a permanent state planning program formally adopting these policies and goals is given little chance for success (110).

Under S.377 a new five-member commission would be established at the state level. The new Land Use Commission would be responsible

for reviewing subdivision and zoning changes and applications within undeveloped areas. In addition, the Commission would designate "hazard areas" in which state criteria would have to be met. A state permit system would be established to control development in those "hazard areas." The bill also identifies key developments or activities that are of state-wide concern (water diversions, highway interchanges, large residential development, airports, and even nuclear blasts) and places such developments under a state permit process.

As in Vermont's case, the proposed Colorado Act would develop a series of regional commissions composed of local officials. These public bodies would prepare regional land use plans and gradually develop an independent capability to review development activity for conformity with state guidelines (111).

The chief points of debate over this latest effort center around the composition of the commission, and its "permit" authority (112). The traditional independence of local officials in dealing with land use matters appears to be the major obstacle to establishment of a permanent State Land Use Commission operating in accordance with a "to be developed" state-wide land use plan.

Model Land Development Code

The American Law Institute since 1968 has been preparing a Model State Land Development Code. Its efforts seem to be patterned after the successful acceptance of the U. S. Department of Commerce's models on planning and zoning during the 1920's.

As has already been stated, Florida is the only state to act

positively on this model, which still remains unfinished. The A.L.I. model corresponds favorably with the guidelines being discussed in both the Jackson and Administration bills.

A.L.I. was established for the purpose of clarifying or simplifying the law and better adopting it to social needs through a restatement of the law and creation of model statutes (113). Its model code is an enabling act aimed at coordinating physical development. It stresses the importance of local governments exercising powers of planning and decision making, except in areas of state-wide concern where the state itself exercises certain powers.

Under the code, land development is regulated through a "development ordinance" (an updated combination of zoning and subdivision regulations) and the issuance of development permits, analagous to present building permits. Local governments are required to prepare the following: a comprehensive plan, a short term program (five years or less), a capital improvement program, and a land development report (an evaluation of progress made in implementing the plan).

At the state level, a Land Planning Agency would be created in the office of the Governor. It would develop state land development plans and establish rules and standards regarding land development having state or regional impact. The state agency would be allowed to participate only in developments having regional or state-wide impact. The code strengthens regional planning by authorizing regional planning divisions as extensions of the state agency, and intertwines an A-95

type review process into the plan (114).

Richard Babcock, chairman of the A.L.I. project, stated in 1971:

> The system preserves the benefits of community control by assuring the local agency the right to make the initial decision in each case. It allows the state land planning agency to concentrate on policy making functions and participate in individual cases only to the extent it feels such participation is necessary to defend its policies. And by allowing the state board to review local decisions in the record below, it avoids the necessity of creating an expensive and time-consuming procedure for new hearings at the state level.
>
> A key element of the entire system is the principle that the state would be allowed to be involved only in the big cases. Probably 90 percent of the local land development decisions have no real state or regional impact. It is important to keep the state out of those 90 percent, not only to preserve community control, but to prevent the state agency from being bogged down in paper work over a multitude of unimportant decisions (115).

Regional Organizations in Land Use

This important element of local control is echoed by nearly all advocates of strong state governmental action in land use matters. There is one other "quasi-local" level that is also important and deserves mention. This is the sub-state or regional organizations which have been created to deal with primarily land use matters. Their experience is equally valuable to future control programs.

Some of the better known of these sub-state resource management organizations are the (1) Hackensack Meadowland Development Commission (New Jersey), controlling use of land in an area of meadows encompassing 14 separate local governments; (2) the San Francisco Bay Conservation and Development Commission which can control development within 100

feet of the bay; (3) the Twin Cities Metropolitan Council which can suspend plans that are inconsistent with a metropolitan development guide for the Minneapolis-St. Paul area (116) and (4) the New York Adirondack Park Agency which controls private development within and adjacent to the Adirondack State park, an area of nearly four million acres (117).

Metropolitan or area agencies have had great difficulty in developing effective programs, primarily due to the lack of popular support and cooperation. A study by the National Governors' Conference described the most formitable barrier as "the concentration of taxpayers in the suburbs while the beneficiary concentration is in the core cities" (118).

The Federal Government and more recently the state governments have attempted to stimulate interest by viewing issues on the regional and metropolitan wide levels. The Federal Government has allowed metropolitan planning agencies and more recently councils of governments to serve as executers of federal and state programs and to be the recipients of grants-in-aid (119). The success has been extremely marginal, suffering from the problems of apathy, staffing, internal conflicts, limited authority, and a lack of institutional ties to state government.

A "governmental vacuum" exists at this sub-state level and whether states will seek to develop this potentially beneficial level in the future is a source of much speculation. It is interesting to note that the A.L.I. model code seems to play down this level,

relying instead on creating an executive department at the state level which has the interest of the region at heart.

CHAPTER V

CONCLUSION

Achieving the Desired Comprehensiveness

The use of the land is probably one of the most basic concerns to society. Land use directly affects the quality of life. Few things concern society more. It is toward the enhancement of the quality of life that land use plans and policies must be directed.

> Enhancement of the quality of life, in fact, is so vital a concept that it must clearly be enunciated and recognized. It must weave its way all through any development plan. Programmatically, it relates to the human resources element of the plan, but in actuality it relates to matters of aesthetics, natural beauty, linkages to the past, and hopes for the future (120).

If the quality of life is to be enhanced, planning and programs must be comprehensive by providing for the optimal intergration of land, water, air and human resources. A comprehensive approach requires the commitment of all levels of government and their available resources and energies.

Senator Jackson recognized the need and importance of comprehensive coverage in state land use programs and sought to achieve this in his earlier bills (S.3354 and S.632). It was to this particular point that a Washington Post editorial supported the Jackson Bill (S.632) over the Administration's effort (S.992) in 1971.

> The fundamental difference between the two bills seems only semantic, but could, in our view spell success or failure of the whole effort to bring order into our environment.

> Senator Jackson's bill calls for comprehensive state-wide planning based on overall economic, social and environmental concerns. It challenges the planners to assure a brighter future by bringing our economic and social needs into balance with the requirements of the natural ecology. The administration bill would have states focus only in "areas of environmental concern," the location of key facilities, and use in development of regional benefit. It does not define critical environmental concern, key facilities or regional benefit, and thus seems to us to only be a call to put out the brush fires. We need more than that (121).

To develop this comprehensiveness in land use programs, states must assert their privileged position and constitutional authority to develop programs to control the use of the land. This is no easy task. Preventing a direct and immediate ascension of states to a position of dominance in dealings with the various land use conflicts are:

(1) the tradition of local autonomy in zoning and planning (122);

(2) the lack of clarity as to the exact role of state government (123);

(3) the lack of a tradition of intergovernmental cooperation (124);

(4) legal entanglements challenging the states' authority to zone (125).

In time, such impediments can be washed away. Already there have been early indications of erosion setting in. States have established their ability to successfully implement effective land control programs. This success draws public attention to, and support for, state efforts. Greater intergovernmental cooperation and interaction has been experienced as states exploit their newly discovered potential in developing various policies and programs (126). Legal complications

have been circumvented as states avoid using terms such as "state zoning." Euphemisms, such as "review capability," "permit process" and "certification by the state," achieve the same end result without running afoul of legal stumbling blocks or inciting the public's wrath (127). Finally, popular attitudes toward the use of private land are undergoing change.

This changing mood in America was explored recently by a federal task force on Land Use and Urban Growth. The task force observed a wide variety of land control measures, from construction moratoriums to sweeping efforts of state-wide zoning, and the reaction of people to these control devices. Their findings indicated that:

> Increasingly, citizens are asking what urban growth will add to the quality of their lives. They are questioning the way relatively unconstrained piecemeal urbanization is changing their communities, and are rebelling against the traditional processes of government and the market place which they believe have inadequately guided development in the past.
>
> They are measuring new developmental proposals by the extent which certain criteria (environmental, social, economic) are satisfied (128).

The task force recommended that gradually development rights (the freedom to put up structures or otherwise commit parcels of land to a particular use) on private property will be regarded as "resting with the community rather than with the property owners" (129). People recognize that protection and enhancement of environmental values require that tough restrictions be placed on the use of private land.

While the weaker impediments to stronger state action in land use matters will be pushed aside, other bastions, centered around local autonomy and tradition, are unlikely to give in as easily.

The importance of the role of local government and public support in any type of state program to control land use is well recognized. For this reason, states must adopt a strategy which allows for the gradual assimilation of these elements. To accomplish this, it is recommended that states slowly expand their responsibility over land use through a series of sequential stages. Each stage must build upon the foundation of intergovernmental cooperation developed in the preceding stage. This approach would culminate in the states developing a clearly defined, popularly supported, and effectively implemented state-wide, comprehensive land control program.

Recommendation

This expansion of state responsibility has been divided into three stages. More than three stages would sacrifice the important element of flexibility. Land use is too diverse to fall into a regimented, clearly defined pattern for all states to follow. The requirements for each governmental level during each stage must be in terms of general guidelines. However, less than three increments would remove the important aspect of a gradual building of state responsibility. Each stage allows for a larger role for the state at the expense of the traditional role assumed by local governments almost 75 years ago. The three stages are: the consolidation stage (stage I), the implementation stage (stage II), and the enforcement stage (stage III). The distinction between the stages relates to both the role and the extent of control exercised by the state governments in relation to the federal and local levels.

To visually depict the stages of development, picture an area of land which includes an urban area, surrounded by suburban growth located on a river. Spreading out from the present limits of the urban area are vast open, non-urban areas of agricultural lands and forests. These non-urban lands extend to a distant mountain range.

Under Stage I controls, the state would, in accordance with federal guidelines, establish their authority to control land use over specifically designated areas of critical concern. These areas would be defined by the state legislature. For our purposes, let us assume that State "A" designated river corridors (1500' each side of the banks of all navigable waterways) and mountain ranges (above 2,000' elevation) as areas of critical state concern. All other areas in our mental picture would be left to the traditional local authorities to control.

During Stage II, the state would extend its authority to include the non-urban areas as defined and identified in the state-wide land use plan adopted during Stage I. State control would be exercised through a permit or state certification process in which all development in designated non-urban areas (i. e. wooded areas, agricultural lands, wetlands) require state approval. Regional elements would emerge as extensions of the state. Local levels would still exercise full control over land uses in urban areas.

In Stage III, the state would establish development criteria for urban designated areas. This would not deny local governments the opportunity to maintain control over the bulk of land use decisions.

It would make all decisions, local and state, subject to the same guidelines and thereby insure a comprehensiveness and balance in terms of various social, economic, recreation, aesthetic, physical development and environmental state-wide needs. Local governments would be encouraged to meet state requirements. Where local governments failed to meet guidelines, states would exercise total control until local governments established a land use program incorporating state guidelines. In urban, non-urban and critical designated areas where local levels met or surpassed state guidelines, states would play a passive role. In this way, the state provides an incentive to local governments to develop a comprehensiveness and area perspective in their land use decisions.

Every effort should be made to keep land use decisions at the local level. Even where local governments fail to meet the states' minimum guidelines and states are required to assert control, input from local officials, planning agencies and citizens must be encouraged. This gradual three stage sequence will result in:

(1) the development of a comprehensive land use control capability administered at the state level;

(2) the promotion of cooperation between various levels of government in the planning and management of an issue affecting the well being of all the citizens of the state;

(3) permitting an orderly, evolutionary revision or phasing out of traditionally accepted institutional devices and techniques which were proven to be ineffective in dealing with the complex

issues of land use; and

(4) the return of responsibility for land use matters, the planning, management and control, to the states where it ultimately belongs due to the states' inherent powers and strategic position.

To understand this sequential transfer of land use control from its traditional resting place with local governments to its preferred location with state governments, it is necessary to examine the specifics of each stage of the sequence.

Stage I, The Consolidation Period

This first stage of the process begins with the passage of the national land use legislation. Stage I is complete when the state achieves the minimum directives of the National Land Use Act. During this time period, the following steps should be undertaken.

The Federal Level

It is here that the establishment of the national land use program emanates. This level is a pivotal entity in Stage I. It outlines the ground rules and provides the impetus for future action by all levels of government.

During Stage I, the Federal Government should implement and formalize the policy directives outlined in the National Land Use Act. This would require that the Federal Government:

(1) establish a grant-in-aid program to assist state and local governments and agencies to hire and train the personnel required to establish and implement the various state land use programs and provide broad guidelines for states to follow in the development of land use programs;

(2) undertake to coordinate the planning and management of all federal lands and, together with state and local governments, the planning and management of lands adjacent to federal lands;

(3) establish within a line agency of the Federal Government, an Office of Land Use Policy which will review state-wide planning processes and state land use programs for conformity with the act. It should also assist in the coordination of activities of federal agencies with state land use programs; and

(4) encourage and assist the states to more effectively exercise their Constitutional responsibilities for planning and management of their land base. The Federal Government, through technical help, incentives and sanctions, can do much to insure states do not lag in the adoption of land control programs. Through inter-governmental cooperation, economically, socially and environmentally sound uses of the nation's vital land resources can be achieved.

The State Level

During Stage I, states must:

(1) develop a planning process. This would include assigning the planning function to an office of state government; establishing state-wide goals in terms of growth, development and other factors related to land use; and adoption of a state-wide land use plan which includes state responsibility for protection of areas of "state-wide critical concern" in conformance with the guidelines in the federal act.

More specifically, the process involves:

(a) the preparation and continuing revision of a state-wide inventory of land and natural resources of the state. The state

should also survey various demographic and economic factors including shifts, densities and trends in population, economic characteristics, indicators and projections;

(b) projections concerning the nature and quantity of land needed and suited for future use, as well as establishing priorities in: recreation, natural resources, energy transmission, transportation, new towns, industry and commerce, health, education, governmental services, urban areas and revitalizing existing communities;

(c) preparation and continuing revision of an inventory of public and private institutional and financial resources available for land use planning and management within the state and of state and local projects having more than local concern;

(d) identify and designate areas of state-wide critical concern, large scale development, land use having regional impact and key facilities; (These four categories will meet minimum federal guidelines.)

(e) establish a state level land use planning agency or land use commission which would have authority for developing the state-wide land use program and coordinating the planning and implementation stages of the control effort (130). The location of this agency will vary with the peculiarities of each state. An independent commission offers protection from the agency becoming too closely involved with a single focus line agency (131). The thrust of commission efforts should be broad and comprehensive or the land use program will become too limited in its application;

(f) interchange land use planning information and data among state agencies and local governments, as well as other states and interstate agencies. This is important if the advances and successful experiences of states are then to become widespread. The states are able to pick and choose from the various alternatives and mold other states' actions to adapt to their own situation. Such an interchange will also be important in resolving any interstate land use conflicts (132).

(2) establish a joint state-local sponsored system of regional area planning commissions. Where such systems already exist, states must develop the effectiveness of these regional units. These substate elements will play an extremely important role in land use matters in both the present stage and future stages.

These area planning commissions serve to:

(a) play the role of intermediary between state and local levels. They are important transition links in the transfer of previous local responsibility over land use back to the state governments. By including local officials on such area commissions, the value of area-wide perspective is transferred directly to local governments. It provides local governments with the capability to realize first hand the inadequacies of independent, isolated action in dealing with land use matters;

(b) develop a working rapport and intercooperation between state and local levels. Many states with regional or area planning commissions have not achieved the desired degree of success. This is

because the role of these area commissions, and the responsibilities of state and local governments to these commissions, have rarely been quantified. To be effective, state must establish firm rules for the membership, methods of financing and the handling of administrative matters by these commissions.

(3) experiment with various land control techniques at the state and local levels. States can gradually reassert state responsibility over land use by: establishing a direct control program over areas of critical state-wide concern, and by testing the effectiveness of untried devices in cooperation with local governmental efforts.

States during Stage I should encourage local governments to experiment with devices such as tax incentives, density incentives and public land assembly schemes to either limit growth, or where growth is desirable, to foster acceptable types, styles and patterns of new development (133).

In the same way that the states act as laboratories for federal legislation, municipalities can perform a similar service to state governments. States can adopt, on a state-wide basis, control devices with which local governments experience success. This might result from revising traditional control methods such as zoning, subdivision regulations, the official map, building codes and capital investment, or from newer less traditional control procedures. These more innovative techniques might include: impact zoning (134), scenic easements (135), land banks (136), private party action (137), "no zoning" (138),

zoning by the free market system (139), or the other devices mentioned above.

(4) undertake an extensive public information program to keep citizens informed of state activity (present and future) in land use matters. The support which Vermonters have shown to efforts to develop a coordinated and comprehensive land use control system at the state level is attributed largely to the public information campaign by the State (140).

States, by keeping people informed and up to date as to the latest activity, are able to dispell popular misconceptions about state involvement. Recognition of the important value of citizen interest and support is a key element in winning legislative approval and local governmental support. These are both vital features in enforcing any state program.

By working through existing institutions, and by allowing local governments to continue to make the bulk of the land use decisions during Stage I, states can become invited guests into the land use control process. Citizen support is a fundamental element in developing cooperation with and respect for the state by local government levels. For the state to win such support involves patience, respect for popular opinion, and a recognition of citizen needs, values and their desire for enhancement in the quality of life.

(5) adoption of a state-wide land use plan, drafted by the state land use board with input from state, regional and local planning agencies, officials and citizens. It is important that at

the earliest possible date, a land use plan be implemented. This is to allow the maximum number of decisions on land use to be made with reliance on such a plan. Since time is an important element, the Stage I plan should be an "interim plan." It should do little more than describe broad categories and identify areas of state-wide environmental concern.

During this stage, the plan should be gradually elaborated to include policy statements and more defined guidelines which local governments should use as a basis for making their planning decisions governing future development (141). The state-wide land use plan could be combined with other functional plans to provide the necessary degree of coverage. The important element is that local and state decisions on land use be based upon the plan.

Requests for variances, by landowners, from the adopted land use plan would be subject to local appeal bodies until a state system for enforcement is formally established. The amount of state regulation during this phase, outside of areas designated by the federal act, consists primarily of establishing standards with reliance on enforcement by local governments and the courts (142).

Stage II, The Implementation Period

Stage II in this sequential expansion of state authority and responsibility is the implementation period. During this stage, states should consolidate their position and activate their land control program.

The time-table for compliance will vary greatly due to the

diversity of needs in the individual states and the speed at which they accomplish the features of Stage I. States must delay long enough so that the transition from Stage I occurs smoothly and not only with the acquiesence of the local governments and citizens, but at their insistence.

During Stage II, the states establish their role as the key actors in the land control process. The Federal Government's role is relegated to supervisory review of state activity, and the planning and management of the lands included in the federal domain. The Federal Government's chief role is providing an impetus for state action. Local governments will continue to perform the bulk of land use decision, but more as pawns of the state government than independent entities.

States should:

(1) adopt a permanent land use plan which divides all the state into three broad land use categories: urban, non-urban, and areas unsuited of any type of development. This latter category is principally areas of critical environmental and state-wide concern, identified in Stage I.

These broad areas would be delineated by the state land use agency based upon a variety of criteria (i. e. legislatively determined areas of critical concern, population densities, structures per acre, projections of future needs, incorporated areas). The state would continue to exercise total control over areas of critical concern and extend its dominant influence to areas classified as non-urban.

Non-urban would be primarily those areas sparsely settled, agricultural lands, wooded areas and wetlands. State control would be exercised through a permit system.

During this stage the permit system, or certification system, would be jointly administered by state agencies and regional planning commissions. These commissions would be beefed up versions of the area planning agencies established in Stage I. The beefing up would come about through a combination of measures. These could include:

(a) expanding the state's share of the commission's operating budget;

(b) empowering the Governor to appoint one member on the commission to serve as a "state spokesman" and direct liaison to state government; or

(c) expand the state planning agency to enable it to provide technical assistance to area commissions through use of "specialists." These state specialists would aid in problem areas such as plan formulation, data collection techniques, programming, budgeting, and community relations.

These commissions would become administrative extensions of the state and gradually assume the responsibility of testing proposed developmental activity against the state guidelines, and authorizing development in non-urban areas when criteria are met.

Under the certification system, all types of development of sufficient size and located within designated non-urban areas or areas of critical state-wide concern would be subjected to state agency

review for conformance with state guidelines (i. e. health, environment, safety, soil characteristics). The district commission would review all development for conformance with guidelines enumerated in the state land use plan. Certification for development would relate the need for the consumption of additional land to population growth and employment trends and needs. It would also provide for the establishment of standards and the delivery of public services based on the availability of financial sources to develop and maintain these facilities and services (143).

The extent of state and regional agency involvement would be in direct proportion to the extent of local land control programs. State criteria would be established which local governments must follow. Where they did not, the state would take over this function until local elements acted accordingly.

The development of a state agency review process can be accomplished by executive action by the Governor. In many cases, it would simply involve coordinating a series of apparently unrelated permit programs into one, encompassing state effort (144). The Governor is an important character in the creation of an effective land control effort. He wields tremendous power. His potential in initiating activity, his political and philosophical attitudes toward state planning programs, and his relationships with county and local officials are of great importance in the effectiveness of state efforts in land use matters.

(2) employ effective land control devices and techniques proven

successful during Stage I. They should be encouraged on a state-wide basis. In some cases these could be joint efforts by state-local governmental bodies. More likely they will be locally initiated and enforced. States have been successful in selected state-wide programs such as public land assembly (145), incentives (146) and revised taxing policies (147).

(3) continue to make use of all communication media to keep the public informed and concerned over the land use issue. A "backlash" by the public has been experienced in states that seized control over land use in an extremely brief time (148). It is unlikely that a backlash would occur where state involvement is gradual. One reason might be that a gradual assumption of state responsibility for land use results in a less noticeable or tangible indication of state activity which an aroused citizenry or legislature can attack.

The gradual sequence faces the common objection that people will lose interest and with it the chance to convince the state legislature of the need for an extensive land control program (149). For this reason, it is important that the public information campaign not be reduced, as state involvement expands, but rather be enlarged.

Stage III, The Enforcement Stage

Stage III is the enforcement stage, the final step in this sequential pattern. The effectiveness relies totally on the program as developed during the early stages. This final stage is nothing more than a time to sit back and reap the harvest of the years of development. Early in this stage, the state should extend its control

to the urban areas. Once this has been accomplished, the development of a comprehensive aspect to the control program can become possible.

In Stage III states will:

(1) extend their permit and district review capability to all development in urban designated areas where local governments fail to meet state established guidelines (for development in urban areas). Where guidelines are met, direct state control will be limited to developments of sufficient size. With the inclusion of urban areas under the states' control, coverage becomes state-wide with the exception of federal lands.

The expansion of state control to cover all land use matters allows the state to tackle the important urban land use issues, the most complex in terms of the interrelationships of conflicting factors. Within the web of urbanization, municipal, metropolitan and state governments must seek out solutions to issues of health, environment, industrial growth, housing, urban blight, mass transit, energy, and aesthetics. Until the state land use control program becomes involved with the problems of the urban areas, comprehensiveness is impossible.

Years ago, land use planning was primarily geared for economic development. More recently, it has changed course to a concern for natural systems and environmental protection. The real value of an effective program is not simply altering one single purpose venture so that it adapts to another single purpose venture. A land use program must serve as a mechanism to implement multiple objectives.

In this way, it becomes comprehensive (150). Not only should the program be comprehensive in scope, but comprehensive in application. There has to be the balance to which Senator Jackson refers. One issue cannot predominate to the detriment of another.

(2) parcel out to local and regional levels a greater share of responsibility over development control. The states having centralized their control capability should delegate greater authority to the regional commissions and local governments.

Local levels would gradually experience a return of a greater share of land use decisions as states incrementally increase the size of developments subject to the state permit system and area commission review. During Stages I and II, local levels witnessed the state consolidating the land control program. Through cooperative efforts developed during these stages, local officials and municipal agencies became exposed to the elements of the control program as well as the value of area perspective and comprehensiveness.

Ideally, by Stage III, local governments would have developed an ability not only to meet state guidelines but establish their own criteria to govern local development. This fine tuning of state guidelines to be more adaptive to local conditions would allow for more flexibility in the process without sacrificing state-wide needs.

By extending to local governments a greater role in the day to day decisions, the state land use administrative machinery would be in a position to concentrate on monitoring the enforcement aspects of the plan. Local governments will likely be extremely

effective in administering and enforcing state guidelines and adhering to state land use policies. In the same way that states are going well beyond the minimum guidelines being discussed for the national land use legislation, local governments will no doubt assume a very aggressive posture in enforcing and administering their own guidelines, once given the opportunity by the state government.

Regional levels would serve as on scene observers and supervisors of local governmental activity, insuring compliance with state criteria, but serving more as advisory, policy formulation and appellate bodies than decision makers. Area commission review would be limited to only the very large scale development during this stage. (Determination of large scale development would be up to individual states.) These regional units would serve as passive monitors of all local level activity. They would be included in any locally administered permit review process. Regional units would suggest to local officials that a decision be reconsidered which might have detrimental impact or fall short of the minimum state guidelines. Only when the local government failed to properly reconsider an issue would the regional commission exercise the state's political muscle and enjoin the development until the state board schedules a hearing and makes a final decision.

The state, through incremental change, would develop a consolidated land control effort. Implementation of the process would be carried out through joint efforts by state, regional and local governments. The enforcement would be left primarily to the local governments. The state and regional elements would act in a passive but supervisory

status. At no time would the states abandon overall responsibility for the various programs.

Each level would be in a position to exercise as much initiative as they wanted provided their action was in accord with minimum guidelines established for that level. State, regional and local governmental activity would all be subject to guidelines. The requirements would become more specific or refined as you proceed down the ladder of the federal system. Federal guidelines to states would be extremely broad. State guidelines to regional and local levels would be more specific. Any guidelines adopted at regional and local levels to guide decision-making at those levels would be even more tailored to the area.

Compliance at each level should be primarily assured through use of incentives at the sub-state level, with penalties only to insure that the more specific guidelines at each succeeding level are met. The goal is for comprehensiveness and this requires total participation. Each level should strive for "balance" in playing its own role and in applying the control process. In addition, each level can serve as a check upon other levels to insure all factors (environmental, social, economic and physical) are being considered.

Summary

The suggestion of a sequential option for state action may or may not be as effective as envisioned in overcoming the institutional blocks to state action. The important element is that whatever specific devices the state chooses to employ, it must be geared to the workings of the political process, that mystical series of interrelated events

and occurrences that make our system of government tick.

At the outset, it was mentioned that this thesis was to examine the political process, as well as to explore the land use issue. Very little attention was directly given to the types of programs available, or the specific tools to carry out certain programs. Instead, an attempt was made to examine the levels of government, to understand their role and responsibility in the land use issue, and based upon these findings, to offer a recommended course of action that would allow states to re-establish their vital role in the land use issue.

The common thread which was seen throughout the various state programs examined and any historical glances at earlier developments is that most successful efforts are those which developed in a methodical, step-by-step process. It may take longer to achieve a desired goal but the long term effectiveness of a program is the most important consideration. People and governments are desirous of finding answers to complex problems that have been developing over a long period of time. Rarely have solutions arrived at suddenly proven effective. Land use is no different.

The specific course of action is up to the states. They must build upon the experiences of others in terms of both avoiding problem areas and implementing appropriate mechanisms. They must decide the type and location for the state land control agency and what powers it shall exercise. The state must settle any legal and constitutional issues which might hinder the launching of a land control effort. The

state must gradually resolve the issue of intergovernmental roles and conflicts. But first and foremost, the state must make a clear assessment of its needs and a firm commitment to the development of a comprehensive land use program that will result in the enhancement of the quality of life for all its citizens.

APPENDIX

SENATE 924

LAND USE POLICY & PLANNING ASSISTANCE ACT OF 1973

Section-by-Section Analysis

TITLE I - Findings, Policy and Purpose

SEC. 101. Congress recognizes in this section that there is a national interest in promoting better land use planning and decision-making. The section lists some of the factors which often cause land use decisions to be made on the basis of expediency and short term economic considerations without recognizing the real impacts. The section lists some of the undesirable results.

SECs. 102 and 103. Declaration of Policy and Purpose.

The policy and purpose of the Act is two fold: (a) to promote the Nation's well-being by better planning the use of its national lands and water resource heritage and (b) to assist and encourage each state to improve its land use planning and decision-making processes. This reflects the joint responsibility under the Federal system. Land use planning and management is primarily a state responsibility. However, because of the national importance of rational land use and because the natural systems on which all life depends do not recognize state boundaries, the Federal Government has an important responsibility for coordinating and assisting the States' efforts.

TITLE II - Program Development

SEC. 201. Program Development Grants.

Authorizes the Secretary of the Interior to make not more than two annual grants to each state to assist that state in developing a land use program meeting the requirements set forth in Section 202 of this Act. Grants can not exceed 66 2/3 percent of cost of program development.

SEC. 202. Program Management Grants.

States that develop a land use program are eligible to receive annual grants to assist in the management of the program. States must establish a planning process, designate a land use planning agency at the state level and develop methods to reassert state control over land use decisions of greater than local significance. The bill sets forth four areas where the state must exercise control over such decisions:

1. Areas of critical environmental concern such as beaches, wetlands and flood plains. Any area where uncontrolled development could cause irreversible damage to important natural systems or historic, cultural or aesthetic values. It also includes areas where uncontrolled development could unreasonably endanger life or property as a result of natural hazards like floods and earthquakes.

2. Areas impacted by "key facilities," which is defined as public facilities which tend to induce growth and development of more than local significance. Highways, highway interchanges and airports are good examples of facilities which tend to attract rapid development.

3. Large scale development, such as large residential subdivisions or other private development which can have an impact outside of the local jurisdiction in which it is located. This also includes new

communities.

4. Areas proposed for development of regional benefit. This includes such facilities as waste treatment plants, and low income housing, the benefits of which to a broader community outweigh the detriment to the smaller community which may seek to exclude it.

The state may choose to exercise its control over the decisions which it decides fall into these four areas either by direct control or by a procedure for reviewing local decisions. Federal lands and Indian trust lands are excluded by definition from these four areas.

The Secretary must be satisfied that the state program covers areas which are of critical environmental concern to the nation and must have procedures to prevent action with respect to those areas which is in disregard of the policy, purpose and requirements of the state's land use program.

Subsection 202 (a) (6) requires that all state and local agency programs and services which significantly affect land use be consistent with an approved state land use program. This provision will facilitate improvement of both the planning capability as well as the regulatory process.

SEC. 203. Federal Review and Determination of Grant Eligibility. The section provides that in determining state eligibility for a grant the Secretary shall consult with and consider the views of other Federal agencies. It also provides that he must act within six months and establishes procedures for a state to revise its plan.

SEC. 204. Consistency of Federal Actions with State Land Use Programs

This section requires that Federal projects and activities significantly affecting land use must be consistent with approved state land use programs which meet the requirements for receiving a management grant under section 202. This provision gives the states a means of influencing Federal activities in the state, including those on Federal lands where they impact non-Federal lands covered by the state land use program. It includes Federal permit and license programs as well as projects assisted with Federal funds. The only exception would be where the President or his delegate determines an overriding National interest.

State or local agencies applying for Federal funds must report whether the state land use planning agency or the Governor considers the proposed project to be consistent with the State Land Use Program.

SEC. 205. Federal Actions in the Absence of State Eligibility.

If a state fails to establish or maintain eligibility for grants under the Act the following consequences may occur:

(a) It will not receive further grants under the Act.

(b) After three years from enactment, Federal agencies may not take any major action significantly affecting the use of non-Federal lands in that state without having first held a public hearing in that state at least 180 days in advance of the proposed action to explore the land use impact based on the considerations set forth in section 202.

However, where the Federal agency affected has not already established procedures involving public hearings with opportunities

for public participation in the agency decision-making process and preparation of a detailed statement, then it is intended that this established procedure be followed concerning the effect of the proposed action on land use under this section or concerning consistency with land use programs under section 204.

(c) After June 30, 1976, the State shall lose in the next fiscal year seven percent of the Federal funds that it would otherwise receive for airport development, highway construction, and recreation area acquisition and development. If the ineligibility persists beyond June 30, 1977, and June 30, 1978, the loss shall be 14 percent and 21 percent respectively in the next fiscal year. Highways, airports and major recreation facilities are major determinants of state and regional land use patterns; this provision would require the states to develop and manage a land use program as an additional requirement for receiving Federal funds for these purposes.

TITLE III - Administration of Land Use Policy

SEC. 301. National Advisory Board on Land Use Policy.

This Advisory Board, composed of representatives of certain designated Federal agencies plus other undesignated agencies as the Secretary may request in particular circumstances, is designed to relate the policies and programs developed under the Act to the programs of the various Federal agencies and vice versa.

SEC. 302. Interstate Coordination.

This section is intended to encourage the use of interstate organizations to implement those aspects of a state's land use program

which involve issues which cross state boundaries or where greater efficiency may be achieved. Subsection (a) authorizes states to allocate a portion of the Federal grant made under this Act to such interstate entities.

TITLE IV. General

SEC. 401. Definitions.

The most significant definitions are: "areas of critical environmental concern," "key facilities," "development and land use of regional benefit" and "large scale development." These terms, as used in section 202 define the categories of land use decisions which have more than local significance and over which the state must assert control.

SEC. 402. Guidelines.

This section authorized the President to designate an agency to issue guidelines to assist the Federal agencies in carrying out the requirements of the Act.

SEC. 403. Biennial Report.

This section requires the Secretary to report biennially to the President and Congress on land resources and land use problems, current and emerging.

SEC. 404. Utilization of Personnel.

This section authorizes any Federal agency, upon request by the Secretary, to furnish information or to detail personnel for temporary duty.

SEC. 405. Technical Assistance.

The Secretary may provide technical assistance to states in the performance of their functions under the Act.

SEC. 406. Hearings and Records.

This section authorizes the Secretary to hold hearings and requires him to do so if he determines that a state is ineligible for a grant.

SEC. 407. Financial Records.

This section requires various reports and records to be kept and made available by the grant recipients.

SEC. 408. Authorization of Appropriations.

This section authorizes the appropriation for grants of $40 million in each of the first two fiscal years following enactment and $30 million in the third through fifth fiscal years following enactment.

SEC. 409 authorizes $10 million in each of the five fiscal years following enactment for administration.

SEC. 410. Effect on Existing Laws.

This section provides that nothing in the Act shall be construed to change various specified existing authorities including the enforcement of air, water and other pollution standards established pursuant to Federal law or constitute a policy prohibiting states from imposing a greater degree of control over land use development under its jurisdiction than is required by the Act. The standards and procedures for enforcement established pursuant to the Federal Water Pollution Control Act, the Clean Air Act and other Federal pollution control laws would be controlling over a state's land use program established under the Act.

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[109]Ibid. Rubino p. 14.

[110]Conversation with Colorado Land Commission staff, 8 May 1973.

[111]Ibid. Lanman, p. 10.

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[121]Ibid. Committee Print. National Land Use, p. 22.

[122]This is the major hurdle. Land use has always been a local function. Institutional devices such as local zoning boards, planning commissions, and boards of appeal have long been accepted as the guardians of residential property values. It is difficult to take control over local land development away from local officials, even though there is little indication that it is successful.

[123]The A.L.I. Code, the model land development proposal, is an example of the difficulty in defining the proper role for states. It has been eight years in the making, with no end in sight.

[124]State controls must be state-wide in scope and application if they are to be effective. States must rely on all levels of government for input, implementation and enforcement of the program. The traditional separation of levels of government presents a formidable block to intergovernmental cooperation. Gradually this is being torn down.

[125]The "due process" clause was originally used to challenge the states' authority to zone. More recently, the clause has been used not to challenge the states administrative procedures, but whether the legislation was proper. (See Schmidt, "Federal and State Involvement in Land Use Controls.) Other challenges emanate from various ambiguities in state constitutions, or powers delegated to local governments in home rule provisions. The Georgia Supreme Court in Herrod v. OBeirne 210 Ga 476 (1954) ruled that while the state constitution allowed the General Assembly to delegate the right to zone to municipalities and county governments, the constitution did not specify that the state itself, or any state agency, could zone. The case law coming out of Massachusetts' Zoning Appeals Law could be extremely significant in terms of not only clarifying the states' role in land use but also legally sanctioning this role (See MacDonald Barr, "The Massachusetts Zoning Appeals Law: Lessons of the First Three Years."

[126]Ibid. James, "Resurgence of State Power," p. 229-230.

[127]Conversation with Harold Wise, 25 April 1973.

[128]New York Times "Authority to Develop Land is Termed a Public Right" Gladwin Hill, May 19, 1973, p. 1.

[129]Ibid, p. 21.

[130]States authorizing commissions to recommend land use action include Michigan, Colorado, California, Washington, Alaska and Pennsylvania. (See Lanman, "A Survey of Land Use Laws.")

[131]Ibid. Rubino, p. 28.

[132]Ibid. Kaunitz, p. 106.

[133]William J. Nicholson "Land Use Controls in Search of the Public Intent," Urban Land Institute Bulletin, Vol 31 No. 2. February 1972, p. 13.

[134]House and Home "Impact Zoning" August 1972, p. 58.

[135]Stephen Sussna. "Land Use Control: More Effective Approaches." Urban Land Institute Washington D. C. Research Monograph, No. 17, 1970, p. 23-27.

[136]Ibid.

[137]Ibid.

[138]Bernard Siegan, Testimony before Senate Interior Committee Hearings, June 23, 1971, p. 331-344. Committee Print.

[139]Ibid. Whyte. p. 38.

[140]Conversation with Bernard Johnson.

[141]Ibid. Haskell, p. 303.

[142]Ibid. Urban Land Institute. Nicholson, p. 15.

[143]Conversation with Harold Wise.

[144]Washington Post, p. 1 25 April 1973. "Maryland Land Use Plan."

[145]Ibid. Kaunitz, p. 111.

[146]Ibid. Haskell, p. 34.

[147]Time Magazine, Vermont Taxing Plan, May 28, 1973, p. 96.

[148]Conversation with John Davis, State of Florida.

[149]Ibid.

[150]Ibid. Haskell, p. 35.

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