DEVELOPING A NATIONAL LAND USE POLICY: CONGRESS, 1970-1974

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INTRODUCTION

Increasing attention has been focused on the emergence of the environment as an area for public policy. This has been viewed as a consequence of historical developments that have converged at this time. L. Keith Caldwell saw this "convergence of expanding knowledge, human populations, and technological capabilities... posing for modern society a challenge without precedence in human experience."[1] The challenge is "growth," as manifested in population and urban growth and their related problems. The remainder of this century is likely to face the effects of a larger population and continued urbanization. The key issues, which many have already identified, will be food supply, energy sources, and environmental quality. The essential common denominator of all three issues is the use of land. As the threatening pressure of food shortages, energy scarcities, and environmental degradation increases, more and more people are looking toward expanding the scope of public institutional control in land use decision-making. However, appropriate policies for comprehensive national land use planning have not yet been established, and presently there is no national consensus on either land use policy or control.

Current land use problems reflect the inadequacy of land use decision-making and the planning process, as well as the absence of guiding principles at the state and national levels. Until recently, the concept of land use management by government has had a "very short history in which the extent and nature of control has never strayed too far from landowners' interests."[2] Based in an ethic which identifies land as both a "commodity" and relatively "indestructible,"[3] social institutions have protected man's social order at the expense of land resources.

Present decisions which affect land use patterns are made at different institutional levels for different objectives. The constraints and inconsistencies of the decision-making process have hindered the resolution of land use problems. Concurrently, it has been recognized, that the established mechanisms for land use control and management are unable to handle the scope of the problems with which they must deal. The major visible tools for control are zoning, subdivision regulations, and property taxes, which are administered at the local level. The present utilization of these tools is neither anticipatory nor guiding. Many existing plans, programs, and developments have no vision beyond their administrative area or long range future in mind. In a time of forseeable threats to food and energy supply, decision makers are also left without national policies treating growth and development, natural resource use, and the impact of technology. Without a consensus on land policy issues which need state and national consideration, the implementation of plans continue to have little positive impact.

The pervasiveness of land use problems becomes apparent upon realizing the scope of its interrelationships. Land use problems face all governmental and social institutional levels, in both the public and private spheres. The implications of the spatial arrangement and use of land influence almost every aspect of the human predicament. Issues in the current public debate cover social, economic, political, cultural and environmental policies which are necessary so that present directions do not diverge from the interest of future survival.

With the complex nature and range of land use problems, many segments of American society are relying on the federal level of government to provide some leadership and guidance in land use policy and planning.

In an earlier step, the federal government has moved to control and coordinate its own activities through the National Environmental Policy Act of 1969, and through air and water pollution laws. For the most part, these federal laws are designed for the federal government to regulate the programs it promotes.[4] Congress has deliberated on a national land use policy since the passage of NEPA. Previously, most legislative action has been mission-oriented and piecemeal. Many programs and policies, that have been adopted, lack the understanding that land management difficulties, which are made evident by an almost exponential rate of growth and their ensuing environmental problems, are systems problems. Recent policy recommendations for national land use policy and planning have attempted to get at this point.

The scope of this paper covers Congressional activity on national land use policy proposals from 1970 through 1974. During this period Congress deliberated on a number of national land use bills without success. What remains are voluminous pages of Congressional testimony, committee reports, and floor debate as well as government studies on land use problems, issues, and potential solutions. They contain a large diversity of viewpoints on this multi-dimensional topic. It is the intent of this paper to tap this rich literature source, which also is part of the "public record," to document the legislative history of national land use policy acts, and to take a closer look at the problems, objectives, issues, and proposed programs as they were perceived by the policy makers in Washington.

Given the vast number of land use proposals introduced in Congress during this period, this paper is limited to the "principal" national land use policy and planning acts. It was in these acts where attempts

were made to develop comprehensive and systematic approaches for land policy. In covering this material the paper is divided into two sections. The first presents an overview of land use problems as derived from the Congressional hearings and government studies. The second part of the paper describes the chronological development of Congressional policy proposals.

LAND USE PROBLEMS: AN OVERVIEW

Land Use in the Environmental Era

The use of land has historically been a prominent issue in preservation, conservation and natural resource policies. The environmental movement of the 1960's and 1970's provided a general concept for approaching societal problems of which land use was one. Increased concern was focused on the impacts of population growth and distribution, and of technological advances--all of which have critical relevance to the quality of the environment. The passage of the National Environmental Policy Act of 1969 also opened the door at the national level which allowed questioning of the traditionally accepted "growth concept." It asked for a balance between the population and resource use "which will permit high standards of living and a wide sharing of life's amenities."[5] President Nixon seemingly recognized the importance of land use to the environment when in 1970 he said, "... the impact of any given level of population growth depends in large measure on patterns of land use."[6]

The transcending nature of the term "environmental" and goals of NEPA conceptually established guiding principles for land use policy and planning. Land use planning has been referred to as the 'product of the

environmental "revolution"[7] as well as a "fundamental measure that could be taken to implement the NEPA."[8] The intent of NEPA has been to insure that the "environment be considered equally with social and economic factors in the planning process. The parallel movement for land use policy views planning as a necessity for protecting the environment which is presently being degraded by the pressures on land resources. In the long run it can become the most significant public policy action to accomplish the environmental goals of NEPA because it can influence population growth, population distribution, natural resource use and other growth related variables.

As stated earlier NEPA provided the conceptual basis for environmental management, but "fully developed institutional machinery and specific laws and policies"[9] presently do not exist to do the task comprehensively. For this reason, many of the same issues, which have been raised in the environmental movement, are being discussed in connection with land use policy and planning. They are population growth, incidents of pollution, effects of pollution on animals and humans, quality of life, transportation impacts and energy consumption. Senator Henry Jackson summarized the connection between environmental policy and land use policy when he said that land use policy and planning is the focal point around which we develop a framework within which proposals to use and consume natural resources can be balanced against one another and measured against the demands collectively imposed on the environment.[10]

There is no doubt that land use policy is crucial to environmental management and that the rise of land use as a national issue is greatly enhanced by the 'environmental era.' Therefore, as an issue, establishing a land use policy entails a major change for the policy developing bodies. It is a new policy, and its comprehensive nature is unique.

Symptoms of the "Land Crisis"

The development of land use to a national issue was slow. There are more than 10,000 governments already regulating land from different levels. This regulation and control is highly diverse, and not approached in any comprehensive or even coordinated way.[11] Because of its structure and functional limitations, existing systems of land management are overwhelmed by urbanization and industrial growth. The symptoms resulting from social, economic and political pressures on the management system have raised popular discontent with the present unrestrained and piecemeal spread of urban areas, with the degradation of the environment, and with the number of land use conflicts.

The problem of sprawl was the first visible symptom, and was described as:

> . . .land development taking place at the periphery of expanding areas. . .characterized by substantial bypassed tracts of raw land between developing areas and a scattering of urban development over the rural landscape.[12]

Urban sprawl was spreading population density across vast areas of land. Rapid population growth was pressuring cities and suburbs for more suitable land to meet their needs. Statistics show population shifts into metropolitan areas in the United States in the last two decades. The important characteristic of this shift was that the population of central cities has not increased nearly as fast as suburbs in metropolitan areas. From 1960 to 1970 central city population grew five percent (5%), while for the same period suburbs gained twenty-eight percent (28%).[13] Although more and more people live in large urban areas, and although the concentration of the total U.S. population was intensifying, the density within metropolitan areas was declining, which meant metropolitan

areas were expanding. Residential development, followed by more industrial and commercial development, was taking place outside the central city.[14] This pattern of growth was not being controlled by existing land regulation mechanisms.

The resultant of this rapid uncontrolled development was a pattern of mixed and interdispersed land uses. The magnitude of this pattern was increased by another sprawl factor--"fringe speculation." This speculation holds six (6) million of some 17 million acres which have been withdrawn nationally from other uses by urban growth.[15] Holding this land out of the recognizable planning focus left use determination heavily dependent on economic gain. This speculation increased the hardship on non-intensive land uses near urban areas.

Mark H. Freeman, Executive Director, League of New Community Developers, speaking before the House Subcommittee on the Environment in 1974, characterized sprawl as:

> . . .both ugly and wasteful. It has overwhelmed our ability to provide services on an effective and economic basis. It has made economic and social integration virtually impossible to achieve. It has destroyed our landscape and threatens our delicate ecological balance. Scattered and unplanned development has turned many parts of our country into a mammoth non-system of non-community living.[16]

The "mammoth non-system," Freeman's description of the landscape, accurately depicted what has been called "leap frogging," or discontinuous suburban growth. This non-system leaves areas bypassed for a variety of reasons such as unavailability of adequately-sized plots, increasing land costs, or inaccessibility to transportation. Problems which have been identified with this type of pattern were additions of costly facilities, difficulty anticipating demand for public and other

services, and impeded access and costs of transportation. Utility lines, roads, water and sewer were not necessarily planned or used economically. The probability of wasted public investment on construction grew with the more eratic spread. Widely-dispersed development patterns raised the cost, time and the burden on highway facilities for commuting purposes. The same held true for trips to schools and commercial establishments. The costs of urban sprawl development patterns could not be ignored.[17]

There is a social significance attached to the costs of sprawl. Occurring simultaneously was an urban-suburban polarization. Racial minorities and low-income groups were continually confined to the central city, unable to pay the costs of suburban areas. ". . .(it) is not simply a denial of decent housing. It is a denial of access to jobs; to good schools; to public services, and a environment."[18] Population concentrations, for example, were reducing urban open space amenities, and the scarcity of open space caused those with the means to move outward--which complicated the demands on metropolitan suburban sections. These increasing pressures of urban growth were leading many outlying local communities to actions which prohibited or restricted further residential development to the dismay of minority groups. Conflicting values appeared which tended to pit human equality and environmental quality policies against each other.

In summary, the impacts of sprawl induced by population growth and development patterns had wide-ranged effects. Population shifts from urban to suburban areas, as well as rural to suburb expanded the numbers and area of metropolitan regions. Land was continually being taken for housing, industry, shopping centers, and supporting facilities which reduced public open spaces, aesthetic landscapes, and critical ecological

areas, outside of urban areas. Various adverse consequences of sprawl were the separation of people from employment opportunity, straining of transportation facilities, distortion of tax bases, encouragement of poor site design, frustration in planning sewer, water and public facilities systems, and the decrease of housing supply for the poor and an increase in its price.[19] These were all dissatisfying characteristics of the present situation which when projected into the future show greater conflicts than those presently experienced.

The second major symptomatic category was the degradation of the environment from current land use practices. Every land use decision directly affects the environment within and surrounding that segment of land for which that decision has been made. It may be an overall positive or negative influence on the ecological systems functioning in that area. Until NEPA in 1970, little had been done to incorporate the environment effects into land use development and planning. It was only recently that environmental values were increasingly used in governmental and some private decisions. For the most part, as land was more "intensively and extensively" developed and utilized, irreversible environmental degradation resulted in many areas.[20] "The broadest and probably the most significant land related problems were secondary consequences of land use patterns and practices."[21]

These consequences came from ignoring environmental factors. Urban sprawl, more of a non-land use practice than practice, was polluting and depleting groundwater supplies by development on aquifers and their recharge zones. Air pollution resulting from extensive and poorly designed transportation networks which serve metropolitan areas was adding fumes, particles, and noise to living and working environments. Development

has taken over many floodplains which raised the probability of pollution as damage to the structures themselves. Accompanying waste disposal problems have forced alteration of wetlands and marshes for land fill sites which destroyed many wildlife habits. Common use of combined sewage and storm sewers discharged untreated sewage into receiving waters during periods of heavy rainfall, which disrupted water quality. Airports and large developments also polluted the air and water and generated secondary development.[22] Other detrimental uses to the environment, associated with growth and development, were linked to siting of power generating plants which were needed in new and old areas in face of a constantly increasing demand. Concern was focused on thermal discharges, air pollution and where applicable radioactive waste disposal. Transmission lines were also cited for taking away from the aesthetic value of any area whether it was remote or in the center of the city.

Environmental problems related to land use were not limited to sprawl and metropolitan areas. Extensive development in watersheds, such as clear cutting for timber, channelization programs, roads, and housing, were increasing the frequency and severity of floods, promoting erosion, and destroying wildlife habitats. Agricultural practices were faced with feedlot and nutrient runoff, eutrophication, erosion, pesticide runoff, and animal waste disposal. Other connected problems were induced changes in vegetative cover, predator control, and salinity of irrigation return flow.[23] Another problem was loss due to stripmining such as sedimentation, erosion, damage to fish and wildlife, and aesthetic deterioration. A common problem to all these, but not stated, was the disruption of ecological stability.

The third symptom represented the recent clash of values that helped bring land use policy to a forefront position. As people realized the implications of sprawl and environmental degradation from which the present land management mechanism offered no relief, controversies formed over the determination of land uses.

> "Almost constant conflict exists between urban development and conservation principles. The profit goals or private enterprise and the requirements for economy placed on public agencies have caused developments of all kinds to take an unnecessarily contradictory position toward environmental preservation and enhancement."[24]

With escalating demands for land from competing interests, the land management system was asked to resolve which land needs are to be met. The system has been unable to decide on courses of action to promote policies and programs which take into account both the needs of people and the natural environment. The failure to harmonize these needs was maximizing the degree of conflict in every land use decision. Concurrently, decisions were made which did not recognize the values of all the areas to be affected by the policy.

Conflicts have already appeared on the national, state, and local levels with varying degrees of attention. National controversies such as the proposed jetport near the Everglades National Park,[25] trans-Alaska oil pipeline, and the cross-Florida barge canal[26] reflected the acceptance of public consideration of environmental values in land-related decisions. The termination of the jetport proposal and abandonment of the barge canal would have been a clear indicator of the strength of environmental policy, but the approval of the Alaska pipeline exemplified the continuing confusion over the priority of values even in the face of policy-establishing legislation such as NEPA.

In summary, present land use decisions are adversely affecting the environment, economies, and social conditions of entire regions. The incongruencies of form and waste of the land resource base by urban sprawl, degredation from lack of environmental concern, and confusing results of conflicting land use patterns were plainly visible.

The rise to national concern of land use policy and planning could be attributed to the environmental movement and a number of related issues which helped set the atmosphere. The realization that land is finite in quantity was by far the most important attitude change which the environmentalists had influenced. Environmental legislation also showed a concern with the quality of life and human ecology which seemed absent in land-related decisions. Growing incidents of pollution, and new studies on pollution effects exposed the seriousness of the environmental situation. Land uses, received new consideration for their detrimental effects. The relatively independent actions of the private sector were receiving more criticism for their simplistic, profit-motive orientation. Similarly, public agencies either as developers or in controlling development in transportation, schools, sewer lines, treatment plants, recreational lands, open space, airports, bridges, and power plant sitings, were blamed for not considering the overall effects of their actions and for not coordinating their programs toward any common goals, except that of meeting and promoting growth.

Background Reports: Identifying the Problem

In 1970 legislation proposing a national land use policy was introduced by Senator Henry Jackson in the Second Session of the Ninety-first Congress. The basis for the bill (S. 3354) was to follow up the policy precedence of NEPA, and respond to the dissatisfying performance of

current land use planning and regulation. Congress was not alone in its move toward developing a land use policy. Significant developments were also taking place at the state level in land use control. Through the year 1970 Hawaii, Maine, Massachusetts, Michigan, Oregon, Vermont, and Wisconsin and others had taken measures which ranged from protecting critical environmental areas to total state planning. In addition, this emergence of concern at both the national and state levels also supported the reexamination of existing approaches to land use planning and regulation.

The findings of several national commissions on urban and rural problems agreed in concluding that today's land use planning practices and regulation are inadequate to deal with the complexity and range of current land use issues.

Three studies, which were cited in the Congressional hearings on national land use policy, were Urban and Rural America: Policies for Future Growth by the Advisory Committee on Intergovernmental Relations (ACIR, 1968), Building the American City by the National Commission on Urban Problems (Douglas Commission, 1968), and One Third of the Nation's Land by the Public Land Law Review Commission (1970). The first two reports studied the social and economic effects of the present pattern of urbanization. It was an accepted fact that the existing pattern of urban development is the product of countless individual decisions in place of residence or work by citizens, and one areas of operation and investment of private groups and enterprises. "Increasingly conditioning these decisions, however, are governmental policies and programs at the national, state, and local levels. . ."[27] The third report dealt with the present and future trends in land use and their relationship to the

national interest. The ACIR and "Douglas Commission" criticized the present direction of urban growth, and recommended new policy and structural changes. Similarly, the PLLRC study recommended an administrative policy for public lands to fill the present policy void.

Urban and Rural America focused on the "apparent connection between migration from poor rural areas and the growing social tensions in central city ghettos "[28] as influenced by urbanization and migration. Observations of the pattern of urbanization found that metropolitan areas experienced the greatest population gains with noncentral cities within these areas having the greatest percent and absolute increases. Relative growth rates of "urban areas" showed proportional increased with hikes in size categories with those in the 500,000 to 1,000,000 class having the highest rate. Migration was the major factor in growth of large metropolitan areas. On the other hand, America's rural population was relatively stable since 1950, although the farming sector continued to drop. By urban-rural comparisons of population growth, educational and health facilities, housing and income levels, major disparities existed "for every index with rural America consistently in the disadvantaged position." Another disparity was evident between central cities, and its surrounding suburbs and metropolitan area with respect to the greater public finance-public service burdens of the core cities.[29]

Since urbanization has benefited the suburbs and urban fringe of metropolitan areas with respect to population and economic activity, the Commission probed the adverse consequences of urban congestion. The impacts of the recent pattern of urbanization were summaried in the following manner:

--Although there is not estimate of scale of damage, urban crowding has social and psychological effects.

--No reliable estimates are available on the balance of social costs benefits at various levels of urbanization.

--There is a tendency for cities over 250,000 population to spend more per capita, and within the private sector, urbanization leads to higher consumption expenditures.

--Technological and communication advances have opened up more flexible alternatives for plant site location decisions, which were formerly controlled by proximity to markets and supply.

--Small communities and large urban areas will have difficulty in providing employment to meet the needs of their residents--one of the reasons being the flight of business to the suburbs and the urban fringe.

--The remaining rural population and its poor suffer the adverse consequences of declining economic activity, migration of its young to metropolitan areas, and the lowering of the desire to improve.

--The continued concentration of urban growth in suburban and outlying areas foreshadows a prolongation of development practices urban sprawl.[30]

The commission further concluded from these findings that "the role of the government cannot be neutral since the failure to act in itself has an impact. . . virtually all governmental action affects urbanization directly or indirectly, intentionally or unintentionally."[31] With references to the costs of sprawl, the report cited that the undesirable

impacts resulted from a combination of the timing, sequence, and specific type of development. It was also the product of other factors including "public indifference and actions as well as inaction of various levels on government." Urban scatteration was encouraged by ineffective or non-existent land use regulation by local governments, state non-involvement in urban and regional development problems and certain federal programs.[32]

It was felt that in the last analysis "the policies and programs of all levels are inextricably intertwined as they interact with the process of urbanization."[33] Further, ". . . there is a specific need for immediate establishment of a national policy for guiding the location and character of future urbanization, involving federal, state, and local governments, in collaboration with the private sector of the national economy."[34] In its concluding observations, the ACIR recommended a new and expanded role for state government through the development of state urban development plans in consultation with local government. Also, emphasis was placed on developing and coordinating national, state, and local policies for the formation of a national policy. Finally, a reexamination of multi-state regional planning areas and agencies was urged by the Commission.[35]

Building the American City, popularly known as the "Douglas Commission Report" was aimed primarily at the difficulties of achieving housing objectives in urban areas. The Commission's approach was the study of building codes, zoning, local and federal tax policies, and development standards. The general problems which were described in the report were similar to the ACIR study; large disparities existed between urban and rural areas, and within metropolitan areas. The

increase of nonwhites in central cities was observed to be accompanied by an equally large movement of whites from the center city to the suburbs which resulted in a pattern of segregation. This problem was called "monumental and basic" when coupled with the lack of fiscal resources, political representation, and general neglect of slums in center cities.[36]

The report continued to point out the difficulties encountered in coping with metropolitan areas problems. First, the approach to problem solving was "incredibly complex because of the proliferation of local government, all with differing viewpoints" within the same area. Numerous governments have used zoning powers to keep low-income persons out of suburban areas. They also have taken part in a competitive scramble for new industry, and have deteriorated the living environments of their residents for additional commerce. Conscientious local officials, on the other hand, were portrayed as ineffective because of the economic weakness and splintered authority of local governments.[37]

Meeting housing objectives was the major concern of the National Committee on Urban Problems. The Commission found that one-third of the Nation cannot afford adequate, nonsubsidized housing, even with recent gains in the housing stock. Substandard housing was greatest in rural areas, while the concentration of substandard housing and of poor people made up a critical urban problem. The Commission also noted with dissatisfaction that gains in subsidized housing have been extremely inadequate. When weighted with the subsidies in income tax deductions for interest and property taxes, and grants for suburban development available for middle and upper income groups, it was evident that the housing gains of the poor were out of balance.[38]

Another basic problem, identified as aiding the pattern of urbanization, was the administration of zoning. The delegation of zoning power from the states to local governments of any size resulted in a type of "Balkanization" which is seen as intolerable in large urban areas where local governmental boundaries rarely reflect economic and social borders, and the use of "fiscal zoning," the use of zoning to achieve fiscal objectives, by local subdivisions tended to fragment the metropolis. Zoning by local governments in the same metropolitan area has led to incompatible uses along municipal borders, duplication of public facilities, and attempted exclusion of regional facilities. Fiscal zoning was found to exclude from a jurisdiction any proposed development that might create a net financial burden, and to encourage those of a net gain. Serious economic and social dislocations were the result of this practice. The Commission concluded that although zoning was created for the protection of the overall public good, "this often appears to be the last consideration of zoning as now practiced."[39]

With regard to other restrictive controls, many complaints were made against building codes. Basically, locally adopted codes were proven to have unneeded or conflicting provisions and restrictions that added significantly to the cost of housing, delayed construction, prevented the use of modern materials, and inhibited creative design. Other local communities were discovered to have no building code or totally lacked enforcement of an adopted code. In both cases the environment of the local communities deteriorated.[40]

In summary, Building the American City proved that small governmental units had difficulty acting in concert or in working for regional objectives. Agencies for resolving the conflicts of regional and local

goals did not exist in most metropolitan areas. Rarely were regional planning agencies given any powers to supervise local decisions of greater than local concern. This was the basis of what the report called "metropolitan goal distortion. The causes were: 1) lack of government at the right scale, 2) lack of plans and policies, and 3) lack of effective implementation techniques of the right scale.[41] Thus, the existing institutional mechanism did not promote the orderly, equitable allocation of land resources.

Work on the third report, started in 1964 by the Public Land Law Review Commission (PLLRC). One Third of the Nation's Land dealt specifically with the use and disposal of the federal public domain. The approach taken by the Commission was the review of all policies, procedures, and organizational structures used in the present management of public lands. The Commission pointed immediately to the dissatisfying manner of land use planning of public lands. This poor performance was attributed to five reasons. First, many problems were based on an inadequate planning process. The result was a plan which failed to provide users and others interested in public lands assurance that it would not be changed in response to strong political pressures. There was no basis in comprehensive site planning. In the absence of a legislative mandate for land use planning little could be accomplished to determine proper land use values.[42] Secondly, Congress had not established a set of goals for providing guidance for the use of public lands. In other words, land use planning had little formal direction and purpose.

Third, the report cited ". . . a lack of coordination in land use planning among federal agencies and between the federal agencies and

those of other units of government, as well as the general public."[43] Federal and other governmental products of this organizational situation were marked with duplication and inefficiency. Also, the ability to plan the interface areas of federal and non-federal lands was impossible. In the same vein, the "relative roles of Congress and the executive branch had not been clearly defined in determining land uses,"[44] which led to confusion between the classification of land and the uses for which it was zoned. Without an understanding of the discretionary powers of both branches of administrators, future alternative uses of public lands were limited by the classification of land by one level, and the use determined by the other. This has resulted in problems such as "excessive size, indefiniteness of boundaries, lack of uniformity, and interminable temporary withdrawals."[45]

The fourth point was the need for public participation in the planning process for public land, as well as its administration. Lack of participation has deteriorated public accountability of the administering agencies. The Commission continually stressed the need for public input in the planning process in every area of concern for the public domain.

Fifth, given the inadequacies in the land use planning process, public land policy could not be consistently sensitive to environmental objectives. The Commission found that land management agencies have very little statutory guidance, while many administrative objectives and directions existed supporting various environmental and conservation values.[46] On the other hand, many definitions, criteria, and standards for environmental quality lacked operational meaning. It was also evident that public land agencies have not always incorporated

environmental principles in their planning procedures. Part of the reason for this has been an ignorance of the basic knowledge of effects of various uses on the environment.[47] As a result of the gaps in authority and practice of regulating and minimizing environmental impacts, the public lands have suffered a lowering of environmental quality in many places from past activities.

One Third of the Nation's Land outlined close to 150 recommendations for the use and protection of the environment and natural resources in public lands. The recommendations described those measures necessary for integrating environmental, planning and administrative policies with greater harmony in the public land management process. Resource policy issues, which were reviewed in depth, included agriculture, grazing forestry, mining, recreation, water, fish, wildlife, and the Outer Continental Shelf. It was the Commission's contention that the complexity of public land problems justified legislation of controlling standards, guidelines, and criteria under which public land decisions should be made. It was felt that these decisions should no longer be made on "preconceived determinations instead of being based on careful land use planning."[48]

During the early deliberations by Congress for a national land use policy, these three reports aroused many and reinforced others about the need for guidance in land use decision making, as well as assistance in land use planning for development of regional or greater impact. As reported, there was dissatisfaction with the present pattern of urban and rural development in both public and private domains. In addition, it was evident that land use decisions were also social, economic, and environmental decisions.[49] These decisions on the location of a use or

consumption of land determined the pattern of development, and in so doing, influenced the quality of the economy, environment, and society. The logical conclusions of these reports stressed the importance of considering more than obvious factors of a land use decisions or programs, and attempt to make a comprehensive evaluation of the total impact. At the present time, land use decisions have failed to consider all the values to be impacted, and have failed to attach appropriate weights to these values. The result has been increasing accounts of conflict, as social and environmental values begin to oppose the traditional economic determinants in the growing competition for guiding land use. In general terms, the land use problems appeared centered around the inability of social institutions (i.e. public and private policy making structures) to balance social, economic, and environmental values successfully to decide the use of the landscape. As presented in these three reports, there is a lack of effective policy for land use cases, and in some areas an absence of policy altogether. Thus, the expressed need for a land use policy was a call for a guiding direction and a mechanism to resolve conflicts over land use, affecting greater than local concern.

It was at this point that Congress set out to evaluate the land problems and to determine what role it should play in land management.

II.

DEVELOPING NATIONAL LAND USE POLICY

91st Congress: National Land Use Policy Introduced

In January 1970, at the beginning of the second session of the 91st Congress, Senator Henry Jackson of Washington introduced S. 3354, the first major national land use policy act. The basic origins of this act can be traced to one principal source--the report of the Public Land Law Review Commission. The Commission, of which Jackson is a member, recommended that Congress should establish policies and goals for the public lands and provide the management agencies with the authority to implement programs to reach its goals. In so doing, it should provide a dynamic program of land use planning which promotes complementarity between the uses of public lands and the uses on lands of other ownership in the locality and the region. More specifically the Commission called for:

1) systematically coordinated land use planning among federal agencies.
2) a greater state and local government role in federal agency land use planning.
3) additional financial assistance for public land states to facilitate better and more comprehensive land use planning.
4) comprehensive land use planning by regional commissions along the lines of the river basin commissions created under the Water Resource Planning Act of 1965.[50]

Accordingly, S. 3354 sought to amend the Water Resources Planning Act of 1965 by expanding the Water Resources Council into a "Land and Water

Resources Planning Council." The Council would administer, through river basin commissions, a grant program to require development of state wide land use plans.

Consistent with the symptoms of land use problems summarized earlier, S. 3354 found that:

> a) the rapid and continued growth of the Nation's population, expanding urban development, 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 sections, have created a situation in which land use management decisions of national, regional, and statewide concern, short term economic considerations, and other factors which are often unrelated to the real concern of a sound national land use policy.
>
> b) a failure to conduct competent ecologically sound land use planning has required public and private enterprise to delay, litigate, and cancel proposed public utility and industrial and commercial developments because of unresolved land use questions . . . often resulting in locating these utilities in areas of least political and public resistance without regard to relevant environmental considerations.
>
> c) many federal agencies are deeply involved in national, regional and state land use planning and management activities which because of a lack of a consistent policy often result in needless, undesirable and costly conflicts between federal, state, and local governments. . .affecting the location of population, economic growth, and the character of industrial, urban, and rural developments.
>
> d) while the primary responsibility and constitutional authority for land use planning and management of non-federal lands rest with state and local governments. . . it is increasingly evident that the manner in which this responsibility is exercised influences the utility, the value, and the future of public domain lands, that the interest of the public in state and local decisions affecting these areas extends to the citizens of all states; failure to plan at the state and local level poses serious problems of broad national, regional and public concern.
>
> e) land use decision of the federal government have tremendous impact upon the environment and the patterns of development in local communities; thus federal land use decisions require greater participation by state and local government.

> f) it is a continuing responsibility of the federal government consistent with the responsibility of state and local government, for land use planning and management, to undertake the development of a national policy which shall incorporate ecological, environmental, aesthetic, economic, social, and other appropriate factors; it shall be a guide for federal decisions, and provide a framework for development of inter-state, state, and land use policy.[51]

With the absence of a national land use policy to help direct federal, state, and local land decision-making, S. 3354 added a new title to the Water Resource Planning Act of 1965 to declare that it should be a national policy to:

> 1) form patterns of land use planning, management and development which are in accord with sound ecological principles and which offer a range of alternative locations for specific activities and encourage the wise and balanced use of the Nation's land and water resources;
>
> 2) foster the continued economic growth of all states and regions of the United States;
>
> 3) favorably influence patterns of population distribution in a manner such that a wide range of scenic, environmental and cultural amenities are available to the American people;
>
> 4) contribute to carrying out the federal responsibility for revitalizing existing rural communities and encourage, where appropriate, new communities which offer diverse opportunities and a diversity of living styles;
>
> 5) assist state government to assume responsibility for major land use planning and management decisions which are of regional, interstate, and national concern;
>
> 6) facilitate increased coordination in the administration of federal programs so as to encourage desirable patterns of environmental, recreational, and industrial land use planning; and
>
> 7) systematize methods for the exchange of land use, environmental, ecological information in order to assist all levels of government in the development and implementation of the national land use policy.[52]

To effectuate these policy objectives with respect to the "findings", the purposes of the Act can be generalized. First, and probably

the primary emphasis, the bill called for the federal government to encourage and assist the states to more effectively exercise their constitutional responsibilities for planning and management of their land resources. The planning and management of land resources should be ecologically and environmentally sound. Second, the bill was to assist the states, and to administer the responsibilities of the Land and Water Resources Planning Council for the administration of this program. Lastly, the federal government was asked to assume its own responsibility to develop and maintain a national land use policy for all federally owned lands.[53]

The principal instrument to carry out the purposes of S. 3354 was a federal grant-in-aid program. Land use planning grants would be available to any interstate agency, authorized to plan and regulate land use development or an appropriate single state agency, which has statewide land use responsibilities. The purpose of land use planning grants was to enable state and interstate agencies to prepare a "land and related resources" inventory, to collect and analyze information for a wide range of areas related to the supply and demand for land resources,[54] to provide technical assistance and training programs for personnel, to make arrangements for the exchange of land use data and information between all levels of government, and to conduct other planning related and coordination functions.

State land use planning grants would be made by the Land and Water Resources Planning Council (LWRPC), formerly the Water Resources Council. The Council would also be the central administrative body for coordinating and reviewing the land use planning assistance programs, as well as providing technical assistance to eligible agencies. Not only was the

Council responsible for grant authorization, but it would have the power to terminate assistance, if, in its estimation, the state or interstate agency failed to adhere to the guidelines and requirements of the grant-in-aid program.

According to the requirements for grant assistance under S. 3354, eligible planning agencies had to develop a "Statewide Environmental, Recreational, and Industrial Land Use Plan" within the first three years of the enactment of the program. To be eligible for statewide land use planning grants, a single agency must be designated by the Governor, to assume the responsibility for the development and administration of the statewide land use plan. The plan must identify areas subject to state planning as well as areas:

> a) where ecological, environmental. . .physical conditions dictate certain types of land uses are incompatible and undesirable;
>
> b) whose highest and best use, based upon projected state and national needs, on the Statewide Outdoor Recreation Plan. . .and other studies is recreational oriented use;
>
> c) which are best suited for natural resource, heavy industrial and commercial development;
>
> d) where transportation and utility corridors are or should be located in the future; and
>
> e) which furnish the amenities and the basic essentials to the development of new towns--and the revitalization of existing communities.[55]

Lands of incorporated cities, which exercise land use planning and authority, were not subject to the State Plan. Further the guidelines asked that the statewide plan be consistent with federal, state, regional, and local standards relating to the enhancement of the quality of the environment and conservation of public resources, and insure

that regional requirements[56] are considered, and make certain that federal lands are not damaged or degraded by any planned land use.

After the end of the first three fiscal years, S. 3354 further required that the state or inter-state planning agency must have the authority for implementation included the acquisition of interests in real property, police powers to place restrictions on the type of land use activities, and management of public hearings in connection with the dedication of an area as subject to restrictions under the statewide plan. In addition, there must be procedures to modify and change the statewide plan. In summary, the guidelines and requirements provided a framework for a comprehensive plan at the state level, and for the execution of that plan.

In order to coerce, more than encourage, state participation, S. 3354 had sanctions attached to the program for non-complicance. Section 407 stated that any state, which failed to participate by the beginning of the fourth year, or whose funding was terminated by the Council, would have its entitlement to other federal grants programs reduced, and right-of-way permits across federal lands denied until complicance was met. Federal assistance programs would be reduced at a rate of twenty percent per year.

Other provisions of S. 3354 called for the utilization of river basin commissions for supplementary planning functions, state-federal coordination, and a federal information planning center. The establishment of existing and newly created river basin commissions would provide a regional network necessary to coordinate federal, state, interstate, local, and nongovernmental plans for the development of land and water resources in its area. These commissions would also make recommendations

and undertake studies of land and water resources problems. With respect to the coordinative functions, federal agencies were to review statewide plans in light of their own activities before approval was granted to the plans. Upon approval, federal agencies were to plan and implement their land use activities in a consistent manner with the statewide plan, unless an overriding national policy demanded departure from it. The last provision would establish an information and data center. This federal center would maintain an up-to-date record of all federally assisted programs involving any use of federal and state lands. It would also have on file all plans of state and local governments, which have greater than local significance to land use planning, as well as develop statistical data on past, present and projected land use patterns.

After Senator Jackson introduced S. 3354 in January 1970, four days of hearings were held during March, April, and July of that year. Congressional witnesses continually supported the contention that existing land use planning functions above the local level, especially at the state level, were inadequate to effectively evaluate the social, economic, and environmental impacts of land use proposals. It was also noted that local governments were increasingly unable to cope with public concern over the deterioration of the environment. Lynton Keith Caldwell also added, "We cannot rely on individual self-interest, local community or corporate judgement for land use decisions in the public interest."[58] It was his feeling that new institutions were needed to enable present institutions to perform consistently with public interests. The National Governor's Conference in the fall of 1969 pointed to a planning deficiency at the federal level--it's lack of program coordination with respect to land use. The governors' policy position also called for

Congress and the President to develop some basic national goals toward which planning endeavors can be directed. By the fall of 1970 this same body, continued to recognize the importance of national land use policy by adopting almost the same policies as S. 3354.

On the other hand, criticism was raised about the approach and actual development of the statewide plan. Allison Dunham and Fred Bosselman, reporters for the American Law Institute's project to develop a model land development code, acknowledged that state governments were moving in the direction of S. 3354, which would enlarge the powers of state agencies over land use, but they were concerned about the "crucial" questions of defining land use decisions of regional or state impact. They pointed out that any criteria for such evaluation must consider the geographical diversity of values across the United States. They recommended a flexible policy in this case; one possible alternative could be defining certain types of land uses to be controlled by the state. A parallel question was raised about the best level for land use planning. The National Association of Counties suggested changes to incorporate local participation in statewide planning. It was their representatives' feeling that planning must begin at the local level and proceed upward to the broadest level, and "that local officials best reflect local priorities and can thus create the most meaningful plans."[59]

On the whole, the Congressional testimony on S. 3354 reflected an acceptance of the findings and policy statements of the bill. A large percentage of the hearing time was spent supporting the fact that land use problems not only existed, but were critical. The testimony showed consensus of opinion that a national land use policy was necessary, but

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S. 3354 was amended extensively in committee, and was reported too late for action in the 91st Congress.

92nd Congress: Land Use Policy Compromise

At the beginning of the 92nd Congress, S. 3354 was reintroduced by Senator Henry Jackson as S. 632. S. 632 incorporated the results of substantial deliberation by the Senate Committee on Interior and Insular Affairs, and the hearings in March, April, and July of 1970. Although the Nixon administration recognized the importance of land use to the environment in 1970, it was not until 1971 and the new Congress when the administration introduced its own national land use policy S. 992. Both the "Jackson" bill and the Administration bill had equivalents in the House of Representatives. H.R. 2173, H.R. 7804, and H.R. 8503 were comparable to S. 632, while H.R. 4332 and related bills (H.R. 4337, H.R. 4569, H.R. 5504, H.R. 6579, H.R. 8119, and H.R. 10940) equalled S. 992. Thus, the first Session of the 92nd Congress had two major proposals for a national land use policy to consider.

At the same time, the House Committee on Interior and Insular Affairs had another land related bill which later played an important part in the consideration of national land use policy. In April 1971, Representative Aspinall introduced H.R. 7211 to establish public land use policy and guidelines for its administration.

As introduced in January 1971, S. 632 retained the basic approach of S. 3354 to encourage state planning and management by a federal grant assistance program administered by the expanded Land and Water Resources Council. Many of the alterations from S. 3354 to S. 632 were points of

clarification and articulated the comprehensiveness of the bill. In reference to planning coverage, it became at the state's discretion whether or not to include incorporated cities of greater than 250,000 population or in excess of 20% of the state's total population in the statewide plan. Other additions to the plan provided for areas outside the state which may have potential impact within the state, consistency with local as well as state, regional, and federal standards for the environment, assurance of orderly patterns of land use and development, and identification and management of floodplains.

A more elaborate review process was attached to S. 632 in cases of plan disapproval. If the Council disapproves of a plan, it notifies the President who appoints an "ad hoc hearing board." The board consists of a "neutral" governor, an impartial federal official and an impartial citizen. If the board agrees with disapproval, then the Council can reject the statewide plan in question.

Funding authorizations and planning time were also changed. S. 3354 had authorized to Council to make grants in an amount not to exceed two-thirds of the estimated cost of planning for the first three years. It was increased to 90% of the planning costs for the first five years in S. 632. S. 632 was also more generous for grants after the initial planning period. It supported up to two-thirds of planning and operating costs, while S. 3354 assumed up to 50% "new" planning costs and 25% of operating costs.

With respect to sanctions for non-compliance, S. 632 provided for the termination of planning grants to states whenever land use programs failed to gain federal approval by the end of the five years. In addition S. 632 proposed a moratorium on any new federal actions or support for

developments which might have substantial adverse environmental impact or irreversibly commit land or water resources until the state complies with the act.[60]

On February 25, 1971, the Administration proposal for a national land use policy, S. 992, was introduced by Senators Jackson and Allott by request. S. 992 differed significantly from S. 632. The basic ideas for S. 992 emanated from the American Law Institute's Model Development Code as finally conceived by the Council on Environmental Quality for the Administration.[61] The Model Code was based on a "selective" theory for decision-making. "The central thesis of the theory is that land use decisions impacting the interests of more than one local government should be subject to a decision-making process which includes all interests affected."[62] To meet this object the method recommended that states develop a process which plans and regulates areas of critical environmental concern. It was estimated that decisions of this kind make up ten percent of all land use decisions within a given state, and ninety percent remain at the local level. Building on this conceptual approach, S. 992 offered Congress an alternative to Jackson's "comprehensive" planning approach.

S. 992 proposed to establish a national land use policy and to assist states to prepare and implement land use programs for the protection of areas of critical environmental concern, and guide growth and development of greater than local significance. Similar to S. 632 a planning grant program would provide the assistance. The difference in focus and approach was evident in the findings of S. 992. The bill stated that present state and local institutional arrangements for planning and regulating land use to be inadequate which resulted in:

> 1) important. . .values in areas of critical environmental concern[63] being irretrievably damaged or lost.
>
> 2) key facilities. . .are inducing disorderly developments and urbanization of greater than local impact.
>
> 3) coastal zones, flood plains, and shorelands. . .which possess special natural and scenic characteristics are being damaged by ill planned development.
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> 4) implementation of standards for the control of air, water, noise and other pollution is impeded.
>
> 5) selection and development of sites for essential development of regional benefit has been delayed or prevented.
>
> 6) usefulness of federal or federally assisted projects . . .are being impaired.
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> 7) large scale development often creates a significant adverse impact upon the environment.[64]

Based on these findings, and consistent with the selective theory of the ALI Model Development Code, the coverage of the planning program contained areas of critical environmental concern, key facilities, use or development of regional benefit, and large scale development.

An important difference in purpose existed between S. 992 and S. 632. S. 992 made a distinction between its grant assistance to support the development of a planning program and S. 632 to develop statewide plans. S. 992 consisted of two grant assistance programs. One was for land use planning program development, and the second was for the management of developed land use programs. Annual grants were not to exceed 50% of the annual costs to develop the state land use program or 50% of its annual management costs.

Administratively, S. 992 took a line agency approach at the federal level. The Secretary of the Interior would be in charge of grant approval and disapproval. Where programs dealt with key facilities, uses of regional benefit, and large-scale development, the Secretary had the

right of review with the advice of the Secretary of Housing and Urban Development. S. 992 had no equivalent at the regional level to the river basin commissions of S. 632.

States were required to use land use programs grants to develop a program which included:

> 1) a method for inventorying and designating areas of critical environmental concern; and areas impacted by key facilities;
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> 2) a method for exercising state control over areas of critical environmental concern and areas impacted by key facilities;
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> 3) a method for assuring that local regulations do not restrict or exclude development and land use of regional benefit;
>
> 4) a policy for influencing the location of new communities and a method for assuring appropriate controls over the use of land around new communities;
>
> 5) a method of controlling proposed large-scale development . . .in its impact upon the environment;
>
> 6) a system of controls and regulations pertaining to areas mentioned above, which is designed to assure that no violation of any applicable air, water noise or other pollution standard will result from the program;
>
> 7) a method for periodically updating the state land use program; and
>
> 8) a detailed schedule of implementing all aspects of the programs.[65]

To be eligible for the land use management program grants, a state could use one or a combination of three alternative implementation approaches. The three approaches were: 1) direct state land use planning and regulation, 2) state established criteria and standards subject to judicial review and enforcement of local implementation and compliance, and 3) state administrative review of local land use plans, regulations, and implementation with full powers to approve or disapprove.

These approaches would be used to implement the methods developed under the first grant.

Other requirements asked for the approval of the State Governor for adequate dissemination of information, public hearings, and special consideration for all "critical" areas. Coordination of the program with neighboring states was also mentioned, as well as with the plans of locak, state, and federal agencies within the state. Consistency was also required with the regulations of the Demonstration Cities and Metropolitan Development Act of 1966, and environmental impact statement requirements of NEPA in which the relationships between a proposed federal activity and the state program must be described.

In cases where a state fails to submit a plan, S. 992 required a public hearing and environmental impact statement for any proposed federal action. The findings were subject to review by the Secretary of the Interior and where appropriate, the Secretaries of H.U.D. If, on the other hand, the state land use program fails to get the approval of the Secretary, S. 992 would terminate the grants to the state.[66]

On March 6, 1972 S. 992 was amended[67] to include sanctions for states, whose land use programs failed to get approval. The amendment provided a phased reduction in the development stages of three federal grant-in-aid programs. The three programs were the Airport and Airway Development Act, Federal-aid Highway Programs, and the Land and Water Conservation Fund. The phased reduction was 7% in the first year, 14% in the second year, and 21% the third year. Any money withheld from an ineligible state would be reallocated to eligible states.

The Jackson bill S. 632 and Administration proposal S. 992 represented the significant national land use legislation before Congress in

1971. Hearings were held on these bills on May 18, June 7, June 22, and June 23, 1971. The testimony was divided between raising key issues concerning the justification and content of national land use, and critiques of S. 632 and S. 992. "A recurring theme in the testimony was the inadequacy of existing planning arrangements at the state level . . . Nonetheless several witnesses stressed that states are potentially capable of becoming the principal architect of land management." Other concerns represented the interests of a wide public. They were:

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As could be expected the critiques of S. 632 and S. 992 came down to a few obvious differences: comprehensive planning versus critical area planning, development of a statewide plan versus a planning program, administration of the grant assistance program by the Land and Water Resources Council versus the agency approach under the Secretary of the Interior. The Administration promoted its bill with the reasoning that

it was more specific and went straight to the heart of land use problems as they perceived them: assisting the state level to assume responsibility for decisions of greater than local concern, and coordinating federal programs or federally supported programs which impact land use. Critical areas and key facilities would be the extent of policy and control, and not an entire state. Following the approach of "selective" planning, S. 992 also provided visible leadership in the Secretary of the Interior for a more effective coordination of federal and state land use programs.[69] Remarks supporting the comprehensive planning approach of S. 632 felt that "critical areas planning" did not consider all the implications of land use decisions, and in that sense it was too narrow to deal with the complexity of land use problems. In fact, proponents of S. 632 saw S. 992 adding to the existing fragmentation of local planning. In the final analysis, both bills had the same objectives, but S. 992 promised immediate results and a short term program strategy by going directly to perceived priority problems, while S. 632 in a more long term philosophy, opted for comprehensiveness and a plan.

Other national land use proposals were also introduced by Senators Mathias, Allot and Jordan. These proposals were modified versions of the two principal bills. Mathias presented S. 2554 on September 21, 1971. It was similar to S. 632 except that three critical areas from S. 992 were integrated with comprehensive planning, the regional framework was dropped, and the Secretary of the Interior was the program administrator. S. 3175 of Senator Allot was similar to S. 992, and it increased the planning period to seven years and raised the funding levels while dropping the sanction of phased reduction in the three grant-in-aid programs. On February 16, 1972, a day after Allot introduced his bill, Senator

Congress and the President to develop some basic national goals toward which planning endeavors can be directed. By the fall of 1970 this same body, continued to recognize the importance of national land use policy by adopting almost the same policies as S. 3354.

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As could be expected the critiques of S. 632 and S. 992 came down to a few obvious differences: comprehensive planning versus critical area planning, development of a statewide plan versus a planning program, administration of the grant assistance program by the Land and Water Resources Council versus the agency approach under the Secretary of the Interior. The Administration promoted its bill with the reasoning that

it was more specific and went straight to the heart of land use problems as they perceived them: assisting the state level to assume responsibility for decisions of greater than local concern, and coordinating federal programs or federally supported programs which impact land use. Critical areas and key facilities would be the extent of policy and control, and not an entire state. Following the approach of "selective" planning, S. 992 also provided visible leadership in the Secretary of the Interior for a more effective coordination of federal and state land use programs.[69] Remarks supporting the comprehensive planning approach of S. 632 felt that "critical areas planning" did not consider all the implications of land use decisions, and in that sense it was too narrow to deal with the complexity of land use problems. In fact, proponents of S. 632 saw S. 992 adding to the existing fragmentation of local planning. In the final analysis, both bills had the same objectives, but S. 992 promised immediate results and a short term program strategy by going directly to perceived priority problems, while S. 632 in a more long term philosophy, opted for comprehensiveness and a plan.

Other national land use proposals were also introduced by Senators Mathias, Allot and Jordan. These proposals were modified versions of the two principal bills. Mathias presented S. 2554 on September 21, 1971. It was similar to S. 632 except that three critical areas from S. 992 were integrated with comprehensive planning, the regional framework was dropped, and the Secretary of the Interior was the program administrator. S. 3175 of Senator Allot was similar to S. 992, and it increased the planning period to seven years and raised the funding levels while dropping the sanction of phased reduction in the three grant-in-aid programs. On February 16, 1972, a day after Allot introduced his bill, Senator

Jordan and Allot proposed S. 3177 which was the same as S. 3175 with the inclusion of a title on public land policy.

During this period before the Committee reported on the land use bills before them, various survey reports were completed which summarized principal state activities in land use planning and control. Richard Rubino and William Wagner prepared The State's Role in Land Resource Management for the Council of State Governments. Survey results showed that some states felt a comprehensive approach is "inevitable and more logical," whereas others, who were more incremental, focused their efforts on more immediate, functional or geographic problems. Rubino and Wagner summarized by stating that "whatever the approach is, a joing effort of federal, state, and local action appears to be needed to ensure. . . proper balance of economic and environmental interests."[70] Another report in late 1971 of pertinent state land use movements was The Quiet Revolution on Land Use Control by Fred Bosselman and David Callies for the Council on Environmental Quality. Their report covered recent land control legislation in Hawaii, Vermont, San Francisco, Twin Cities of Minnesota, Massachusetts, Maine, Wisconsin and the New England River Basins Commission. The authors concluded that attitudes toward land are moving away from the commodity value, that the role of the state in land regulation is a key issue, and that there is a need to balance the "taking issue." At the time of writing, Bosselman and Callies were still uncertain of what was the most productive state land use program to follow.[71] A third perspective of the state level was given by Elizabeth Haskell in Managing the Environment: Nine States Look for New Answers. This survey traced organizational changes in state governments for improving environmental management capability. Haskell reported that states

saw themselves in a very strategic position for environmental protection given their authority for police powers, and that local government lacked legal authority and a wide enough perspective to deal with land use and environmental problems. Combined with their economies of scale, the state governmental level looked very advantageous for land use planning.[72]

At the end of 1971 the Council of Environmental Quality in its annual report cited two categories of land which were under particular pressure from development. The report identified wetlands and open space lands in a declining trend, but more importantly it stated that data to determine the actual size of the trend was not available. Concurrent with this situation, the report pointed out that state and local action faced persistent and fundamental problems--severe fund shortages and manpower deficiencies.[73] Therefore, assistance was needed to develop adequate data for the better evaluations of land problems.

After additional hearings on S. 632 and S. 992 before the Banking, Housing and Urban Affairs, and Commerce Committees, S. 632 was amended with several portions of S. 992, and a new title concerning coordination of planning of federal lands. It was reported out of committee on June 19, 1972. After further discussions about committee jurisdictions with Banking, Housing and Urban Affairs, Commerce, and Public Works Committees, S. 632 reached the floor of the Senate on September 18. Senator Jackson stated that S. 632 contained "the best features of the previous land use bills, of the administration's proposal, of the proposals of Senators Allot, Jordan and Mathias, and of the many recommendations during the $2\frac{1}{2}$ years of committee deliberations."[74]

S. 632 had the following features integrated into the original draft:

a) it was administered by the Secretary of the Interior through a newly established office of Land Use Policy Administration.

b) a National Advisory Board on Land Use Policy would be established to provide administrative support.

c) interstate coordination was encouraged on an ad hoc basis.

d) statewide land use planning processes to be established within three years, and programs within five years. The programs will focus on areas of critical environmental concern, impact areas and large-scale developments.

e) an administrator of the Environmental Protection Agency must be satisfied that state's land use program is in compliance with federal air and water pollution laws before approval.

f) an ad hoc federal-state joint committee would be formed in request of any governor to make recommendations concerning problems relating to jurisdictional conflicts relating to federal lands and adjacent non-federal land.

In addition, the findings incorporated some of the sentiments given at the Congressional hearings. It was stated that a lack of understanding, and failure to assess land use impacts of public and private programs, "which do not possess. . .readily discernible land management goals or guidelines." presented a need to develop a national awareness and ability to measure land use impacts. Another finding was the lack of adequate data and information on land use readily available to public and private decision makers. The third addition to the findings was a social perspective, which was missing in earlier drafts:

> h) the Congress finds that federal, regional, state, and local decisions, and programs which establish or influence the location of land uses often determined whether people of all income levels and races have or are denied access to decent shelter, to adequate employment, and to quality schools. . .and other public services (see 101(h)).[75]

There were several amendments put forward during the two days of debate for the bill. Senator Muskie offered a large number of changes

to S. 632. In summarized form, they would add specific federal policies concerning land use, require each state to reimburse local communities for any loss of tax revenues or any interruption of public service resulting from the state land use program, and prohibit any exemptions from the requirements for the Clean Air Act and the Federal Water Pollution Control Act. Of these amendments, only the last was passed.

Substantial changes came from an amendment of Senator Hansen. He proposed to eliminate the economic sanctions which withheld certain percentages of a state's airport, highway, and land and water conservation funds as a penality for non-compliance. An equally weighted change was Senator Jordan's amendment to slash the funding from $800 million for eight years to $170 million for five years. Both amendments passed. Other accepted amendments to S. 632 made the national land use program consistent with "Section 701" planning grants. Also, state land use programs would include a coordinated coastal zone management program.

Two other points were raised during the Senate floor debate. First, there was consideration for an alternative place for the administration of the bill. One suggestion was the Executive Office of the President. Given the tremendous task of coordinating federal programs and assistance to states necessary for implementing the bill, no other agency had the experience like that of the Executive, as well as the position of being the center of major decision making. The second issue was the need to explicitly state in the language of the bill that the federal government would not intervene in local government affairs. These were both discussed and noted, but resulted in no changes in the bill.[76]

The amended version of S. 632 as passed by the Senate on September 19, 1972 established the extent of the Senate's work on national land

use policy and planning for the 92nd Congress. New S. 632 was the synthesis of the Senate thoughts on land use problems and their possible solution. Although the basic framework was the same, the amendments from the Committee and Senate floor represented a compromise between Congressional and Executive approaches. Similarly, the loss of sanctions in the bill could have compromised the potential effectiveness of S. 632.

Activity on the House of Representatives side of Congress was not idle during consideration of S. 632 in the Senate. The House Subcommittee on the Environment of the Committee on Interior and Insular Affairs had held hearings on H.R. 7211 to establish public land policy and guidelines for its administration in July 1971. It was not until September and November when hearings were held on the H.R. 4332 and H.R. 2173 and their related bills, which were equivalents to S. 632 and S. 992. Early in 1972 the House Committee under Representative Aspinall had decided to combine the provisions of H.R. 7211, and the national land use policy proposals H.R. 4332, and H.R. 10049 to establish an organic act for the Bureau of Land Management. An amended version of H.R. 7211 was reported out by the Subcommittee under the new title of National Land Policy, Planning, and Management Act of 1972. It had most of the features of of S. 632 with the addition of two titles specifically for developing public lands policy, and for repealing many existing public land laws.[77]

It was the public lands legislation which drew the most criticism. Many also felt that "Aspinall's approach incorporating these (national land use bills) and public lands legislation in the same measure was conceptually difficult and inconsistent."[78] Attempts were made to separate the two, but failed. When Aspinall failed to win in his primary election, the bill was not voted upon by the House.

Although the 920 Congress failed to pass a national land use policy act, it did make some gains toward meeting land use problems. The most significant of which was the passage of the Coastal Zone Management Act (P.L. 92-583). This Act provided for a program of matching federal grants to coastal states to encourage the development of state coastal zone management programs. It was to be administered by National Oceanographic and Atmospheric Administration of the Department of Commerce. Grants were authorized for both the development and management of state programs.

The coastal states had to follow broad guidelines in the Act in developing their programs, in order to qualify for administrative grants. The programs must specify coastal boundaries, establish permissible activities within the zone, designate environmentally critical areas, and provide for a method of program implementation. The states were given a fair amount of discretion in defining "coastal zone."

Since the Coastal Zone Management Act used many of the same approaches considered in national land use policy, it was seen as a possible "pilot project" to the larger statewide planning concept.[79]

93rd Congress: Land Use Planning

National land use policy and planning legislation continued to receive serious consideration from the 93rd Congress. It was reported that over fifty land use proposals were introduced in the first three months of the First Session, "many of which were identical or slightly modified versions of the pending land use legislation of the previous Congress."[80] The first principal national land use legislation was H.R. 91, submitted by Congressman Charles Bennett in the House on January 3, 1973. H.R. 91 was essentially the same as the administration bill, S. 992.

On January 9, Senator Jackson reintroduced S. 632, which had passed the Senate in 1972, as S. 268. A few weeks later, Congressman Young of Florida presented H.R. 2942 (the equivalent to S. 268) in the House.

Senator Muskie of Maine introduced S. 792, one of the only proposals not based on the model of the previous Congresses, on February 7. S. 792 amended the Federal Water Pollution Control Act by adding a new title which would establish an "environmental protection permit" program.[81] Under this new title, the Administrator of the Environmental Protection Agency would be given the authority to award grants to states to develop and implement the permit program and compensate for loss of tax revenues as a result of the permit system. For these purposes the bill authorized three types of grants. "Development grants would supply up to 75% of the cost of establishing an adequate permit system. "Maintenance and revision" grants would cover up to 50% of the cost for maintaining an adequate system."[82] The last type of grant would provide "tax relief" equal to the amount of tax (personal or real) lost as a result of the permit program. S. 792 also had provision to authorize grants to political subdivisions which have been delegated responsibility for administrating the environmental permit program.

Environmental permit programs would be reviewed by the Administrator of the Environmental Protection Agency. The process of issuing permits and enforcement would be based on specific environmental protection criteria, and administrative requirements. In issuing permits the state must follow criteria which assured that:

> (A). . .development will not result in violation of emission or effluent limitations, standards, or other requirements of the Clean Air Act and this Act;

> (B). . .development will not occur on agricultural land of high productivity, as determined on a regional basis by the Secretary of Agriculture, unless. . .approved by the Governor as necessary to provide adequate housing. . .that would not otherwise be available;
>
> (C). . .development will not occur where it would exceed the capacity of existing systems for power and water supply, waste water collection and treatment, solid waste disposal and resource recovery, or transportation. . .
>
> (D) redevelopment and improvement of existing communities and other developed areas is favored over. . .development which will utilize. . .undeveloped areas. . .;
>
> (E) no industrial or commercial development shall occur only where there exists adequate housing opportunities. . .for all persons who may be employed in the operation of such development;
>
> (F) no development shall occur on water - saturated lands . . .without replacement of ecological values provided by such lands;
>
> (G) there shall be no. . .development of the floodplains of the navigable waterways;
>
> (H) those. . .making less permeable or impermeable any position of the landscape. . .control runoff from such lands. . .during storm conditions or times of snow melt;
>
> (I) to the extent possible, upland watersheds will be maintained for maximum natural water retention;
>
> (J) utilities. . .shall make maximum possible multiple use of utility rights-of-way; and
>
> (K) any major residential development will include open space areas sufficient to provide recreational opportunities for all residents of the proposed development.[83]

S. 792 also included processes and procedural requirements for issuance of permits. The processes must provide opportunity for public participation in the development of the permit system, bi-annual revision of guidelines, coordination of federal programs with state and local programs, coordination of planning activities with adjoining states, and assurance that tax policies are consistent with the objectives of the

goals of the "environmental permit" system. The procedural requirements must include public hearings, an appeals procedure, public availability of supporting documents, and prior public announcement of time and place of permit decision.[84] There was no exemptions except for single family dwellings for use by the owner or by permission from the President.

S. 792 provided for coordination and compliance by federal agencies with state and local requirements for environmental protection. Federal agencies must also obtain environmental permits in similar fashion to everyone else.

The Muskie bill was not without sanctions to encourage its execution by the states. Failure to adopt an approved environmental permit program would jeopardize the "state's sewer grant money under Title II, Federal Water Pollution Control Act (FWPCA), foreclose approval of the state's effluent discharge program under FWPCA, and prohibit the Administrator from granting any extensions of time for achieving air quality standards. If an effluent permit program or time extensions for complying with air quality standards have been approved, the approval will be suspended until the state complies with the requirements of the bill."[85]

Upon introduction of S. 792 in the Senate, it was sent to the Public Works Committee, headed by Senator Muskie.

On the 20th of February, the new administration proposed for national land use policy and planning was sent to Congress, and it became S. 924 in the Senate, and H.R. 4862 in the House. The administration's bill was very similar to S. 268, except for a few significant points.

S. 924 represented an amended version of S. 992 of the previous Congress. S. 924 retained the dual grant program for program development

and management, while amending the federal review procedure. The review and determination of grant eligibility of state processes and management programs would consider the views of the National Advisory Board on Land Use Policy, and of the "heads of concerned agencies."[86] In comparison with other land use bills, S. 924 continued to emphasize the development of methods for certain land use planning functions, followed by a management program.

Within a month of its introduction and placement in the Senate Committee on the Interior and Insular Affairs, hearings were held to gather testimony on S. 268. Four days of hearings were devoted to S. 268 on February 6, 7, 26, and 27. Although the Administration bill, S. 924, was not introduced until February 20, Rodgers Morton, Secretary of the Interior, included its major features in his statement before the Committee on February 6. In summarizing these four days of hearings, a Committee report on national land use policy legislation before the 93rd Congress accurately noted a significant shift in the nature of the testimony from that of previous hearings on the same subject. Witnesses were no longer concentrating on the need for national land use legislation, but now focused on the "detailed nature of the relationship of national policy to statewide land use programs."[87] The scope and content of proposals on land policy came under closer scrutiny than they did earlier. More time was spent describing the potential impact of such a program on commercial and industrial acitvity, land values, energy needs, and national growth.[88]

The issues surrounding the relationship of national policy to statewide land use programs were generally concerned with the roles and responsibilities associated with the implementation of the proposed land

use bills. Although some of these issues were discussed in the last Congress, they were neither focused on nor adequately answered. On the question of what the federal role in land use planning should be, Russell Train made the statement that it should be to provide guidance through national goals for land use, financial support for state planning programs, as well as coordination of federal programs related to land use.[89] This became the consensus of the witnesses offering comments on this point. Train further commended that national land use legislation should be structured to give maximum flexibility to states to develop land use programs to meet their particular needs.[90] Recommendations of various organizations of local government officials argued against the implementation of statewide planning programs by state governments. They favored direct funding of local units of government for planning and implementation. It was their contention that local planning expertise should be used, and that funding should reach those "eventually" responsible for implementing state planning programs--local government.[91]

The extent of the federal review of state planning programs proved to be another important issue. Although the federal role was defined basically as one of guidance, coordination, and funding, the control of financial aid could be used to dictate state land use program outcomes. Secretary Morton, giving the administration's opinion, felt that "the review authority should not go to the substance of a state's program, but only to the adequacy of the planning process,"[92] but his comments were more in line with S. 924 than S. 268, which was concerned also with planning program content. Similar concern for the extent of federal influence was voiced with respect to membership on the National Advisory Board for Land Use Policy. S. 268 had not provided state or local

representation on the board. This seemed to be a lack of consistency with the thrust of the Act which called for the states to assume greater responsibility for land use planning and management.

Another question was the amount of funding which would be required to administer state land use programs. Although the actual cost of statewide planning depended on federal requirements, various state governors and Senator Jackson felt that the level of funding for S. 268 was too low. They cited the increasing service demands on state government, and its limited resources to provide for these services. What constituted adequate funding for a strong land use program, remained unanswered due to the number of unresolved variables in determining that cost.

The use of sanctions for program compliance was still another consideration. Although sanctions were deleted from S. 632 during the Senate floor debate in 1972 by the Hanson amendment, and thus missing from S. 268, Senator Jackson intended to attach them to S. 268 when it reached the Floor. The sentiment of many who had worked with other federal grant programs was accurately expressed by Russell Train when he disagreed with statements purporting that if the land use bill simply had sufficient money, the job would get done.[93] Other recommendations supported a combination of strong sanctions and strong incentives.[94] Those opposed to economic sanctions contended that penalties for non-compliance infringed on the "right of the states to determine their own destinies."[95] Further, it was perceived that sanctions represented the extension of federal control into land use decision making at the state's expense, while the bill intended to extend state control over these decisions. The issue remained highly controversial.

The definision of "areas of critical environmental concern" consistently drew criticism from those interests which would be impacted the most by the constraints imposed on designated areas. These interests were made up of land development groups and resource-based industries. S. 268 defined critical areas as follows:

> (e) The term "areas of critical environmental concern" means areas as designated by the state on non-federal lands where uncontrolled development could result in irreversible damage to important historic, cultural, or esthetic values, or natural systems or processes which are of more than local significance or could unreasonably endanger life and property as a result of natural hazards of more than local significance. Such areas, subject to state definition of their extent shall include:
>
> 1) coastal wetlands, marshes, and other lands inundated by tides;
>
> 2) beaches and dunes;
>
> 3) significant estuaries, shorelands, and flood plains of rivers, lakes and streams;
>
> 4) areas of unstable soils and with high seismicity;
>
> 5) rare or valuable exosystems;
>
> 6) significant undeveloped agricultural, grazing, and watershed lands;
>
> 7) forests and related land which require long stability for continuing renewal;
>
> 8) scenic or historic areas; and
>
> 9) such additional areas as the state determined to be of critical environmental concern.[96]

Criticism on this definition focused around two points: 1) too much discretion was left to the states to determine critical areas, and 2) the definition was "too broad and expansive to be practical."[97] In summarizing the recommendations which were offered to amend this definition, it was clear that a more refined, more easily defined criteria for areas of critical environmental concern was desired.

There was other areas which many witnesses felt needed to be strengthened in the land use proposals before the Committee. Greater assurance of citizen participation was encouraged during all phases of federal and state land use planning and regulatory processes. Interstate coordination of land use decisions was also identified for its importance in meeting the objectives of S. 268. Some method of agreement between states was necessary to protect contiguous critical areas bordering two or more states. It was suggested that a formal structure would be more preferable than an informal arrangement.[98] Similarly, the coordination of decisions of a national land use planning program with the Coastal Zone Management Act (P.L. 92-583), and with the concerns of the Clean Air Act and Water Pollution Control Act was stressed.

Senator Paul Fannin urged the addition of Indian reservations to the overall land use planning process. He said, "Exclusion of reservation land from the planning process could be detrimental either to the Indians or to lands adjacent to the reservations."[99] Following this statement Fannin raised the question whether Indian representatives should participate in the planning process.

The problem of promotional land sales was a new issue raised by Senator Gaylord Nelson. He described this pressing problem as the "explosion of massive real estate developments for second homes or year-round living outside the Nation's cities and suburbs,"[100] which was often growth in chaotic fashion. Besides threatening the rural environment, this type of development was putting increasing demands for services on "hard pressed" local governments. Nelson called for "comprehensive environmental studies" prior to the approval of any large-scale residential

development. It was his recommendation that these studies be a provision for federal approval of state land use plans.

The balance of the four days of hearing on S. 268 included many of the same areas and issues discussed in previous consideration of a national land use policy. A point of interest was the relationship of land use and national growth. Many saw national land use policy as one of the implementing elements of a national growth policy. In the absence of a formal national growth policy, a "balanced" approach in land use planning was sought. Some witnesses felt a national land use policy should provide for both the economic and material requirements of a growing population and an expanding economy. Others encouraged the simultaneous development of national land use policy and national growth policy to find the appropriate direction for the country.

On March 28, roughly one month after the Committee hearings on S. 268, Senator Nelson introduced an amendment to S. 268 which added a new title called the "Second Home and Subdivision Regulation Act." The amendment was basically a permit program for regulating large scale residential development. Development was defined as:

(1) the partitioning or dividing for the purpose of sale of resale within a period of ten years any tract or tracts of land owned or controlled by any one person into fifty or more lots within a radius of ten miles of any point on any lot;

(2) the construction or improvement primarily for housing purposes of ten or more units within a period of ten years. . .involving twenty-five acres. . .; and

(3) such other developments as may be included by the state land use planning agency.[101]

The amendment called for the states to develop a permit program in order to retain eligibility for planning funds. The permit program could be implemented directly by the state or by local governments. Permit applications requested the applicant to show a comprehensive map of the proposed development, schedule of completion, demonstration of financial capacity of the developer, a comprehensive statement of the potential effects of the proposed development upon the environment and public services, and any other information required by the state planning agency.

The state review of permit applications must include an analysis of the development's consistency with the statewide planning program, potentially adverse effects, impact on public services, and local and regional need. Permit approval would precede other approvals at the state and local level. There was also provision in this act to encourage consolidation of all permits, licenses, and other applications in order to avoid unreasonable delay. Most importantly the permit authority was to be given the power to issue a cease and desist order to any person holding a permit who was in violation of any provision of the act.

The main impetus behind Senator Nelson's amendment was the movement across the country he saw which needed a rational method for weighing rapid large scale developments which might endanger their environment. Nelson perceived the necessity for the government and economic interests to restore "the public's confidence that they can act in the long term public interest instead of solely for the short term private gain." Without the public's confidence even "legitimate, well-planned growth is rejected."[102]

On April 2 and 3 the Committee on Interior and Insular Affairs held more hearings on S. 268. These hearings were held in Phoenix and Tucson,

Arizona in order to offer local officials and citizens as opportunity to discuss the national land use policy proposals. Much of the testimony covered similar issues as those cited earlier, but the planning and management of public lands and Indian lands were emphasized, as well as concern for mineral development interests.[103]

S. 268 passed the Senate Committee on Interior and Insular Affairs by a vote of 10-3 on May 29. The Committee reported the bill to the Senate on June 7. The Committee report on the bill cited the fact that a number of issues which were raised during the six days of hearings and in the Senate floor debate on S. 632 in 1972 had been addressed in S. 268 as it was reported out of Committee.

In support of wide public participation in land use planning by all interests the Committee recognized the importance of participation in the "Findings and Purposes" of the Act, and required participation throughout the planning program; from setting the guidelines to the development of the statewide planning processes and programs, to final approval, and to implementation of state land use programs. The Committee also added grants and programs for research of and training in land use planning and management. This was an attempt to eliminate potential problems to implementation due to the scarcity of trained personnel and lack of research related to land use subjects. In response to the overwhelming concern about the low level of funding in S. 268, the funding level was increased to $100 million per year for eight years and the federal share raised to 90% for five years and 66-2/3% thereafter.[104]

In further additions, the Committee amended further and adopted Senator Nelson's (with Jackson and Hatfield) amendment to regulate land sales or development projects. "The program would include the making

available of the full range of state expertise to understaffed local governments in predominantly rural areas in the form of comments on the environmental and urban services impact of each project."[105] The regulating government would require the project to meet nine standards "concerning protection of the environment, maintenance of public services, and financial capability of the developer." It does not require a permit program as originally proposed, but a state review. At the same time, the Committee also agreed with developers who testified on the "mounting tide of inefficient, time-consuming, costly and often contradictory paperwork, procedures, requirements, and reviews which government has thrust in the way of their activities."[106] On this issue S. 268 provided for a two year study and report by the Interagency Advisory Board to Congress on the means to reduce multiple licensing.

The Committee also responded in S. 268 to two key issues which were raised on the Senate floor in the debate on S. 632 in the 92nd Congress. First was the concern for the impact of national land use policy on property taxes and local tax bases. Recognizing, as did Muskie's S. 792, that land use policy would affect local property tax bases, the Committee went further to remark that property tax revenues were already impacted by other federal legislation (i.e., park and open space, educational assistance, and anti-pollution measures). To meet this issue; an amendment was adopted to require the Interagency Advisory Board on Land Use Policy to conduct two year studies on the tax revenue affects of all major public programs and activities, and the social, economic, and environmental impacts of various local property tax assessment practices.[107] The second concern, first raised by Senator Hanson in amendment for S. 632, was the possible impact of S. 268 on the traditional rights of private

property owners. In order to remove uncertainty or ambiguity which might allow interpretation of S. 268 to diminish or enhance property rights under state constitutions and the Constitution of the United States, the following section was inserted:

> Nothing in this Act shall be construed as enhancing or diminishing the rights of owners of property as provided by the Constitution of the United States or the constitution of the state in which the property is located.[108]

During the deliberation of national land use policy and planning and coastal zone management in the 92nd Congress, many questions were asked about the relationship of these two programs upon becoming law. The Coastal Zone Management Act of 1972, which passed into law, gave the Secretary of Commerce the responsibility for administration which he, in turn, delegated to the National Oceanic and Atmospheric Administration. In order to facilitate coordination and cooperation between the administrators of Coastal Zone Management Act and the Secretary of Interior, responsible for implementing S. 268, provisions were made throughout the Act at both federal and state levels. Thus, regulations would be drafted by both federal agencies to resolve any conflicts or difficulties which might develop between the two acts.[109] Since the Administration did not want to support the regulation of coastal areas under a separate program than national land use planning, it withheld appropriation of funds for the coastal zone management program. In order to promote the implementation of coastal zone management, Senators Jackson, Magnuson, and Hollings (the latter two cosponsors of the Coastal Zone Management Act) amended S. 268 and the coastal zone program to require proportional federal spending on the land use and coastal zone programs for coastal states. Thus, if funding for one program is withheld, then the spending for the other would be reduced proportionately.

Adopting the earlier recommendation of Senator Fannin, the Committee added a new title to provide Indian tribes the opportunity of a grant-in-aid program for them to develop land use programs similar to the state programs. A mechanism was also provided to help coordinate their land use programs with state and federal land planning activities.[110]

Finally, at the urging of several witnesses, and from the debate on the Senate floor in 1972, the Committee adopted an amendment to S. 268 "which provides for a three year feasibility study of national land use policies by the Council on Environmental Quality, with participation by the Interagency Advisory Board, the states, and local governments."[111] This course of action was chosen because the Committee felt that on this important issue they lacked sufficient knowledge on the feasibility of national policies, and a consensus on what the substance of these policies should be. Given the credible arguments presented both for and against national policies, a study of these issues could allow Congress to determine the appropriateness of adopting such policies in the future.[112]

Senator Jackson, the Committee Chairman, did not add sanctions for compliance to the bill in fear of jurisdictional disputes with other committees. If they were contained in S. 268, the Public Works and Commerce Committees, which have jurisdiction over highway and airport projects, could have delayed the movement of the bill. Jackson planned to introduce sanctions on the Senate floor.[113]

Administration's reaction to S. 268 reflected the basic differences between S. 268 and S. 924. The White House felt S. 268 did not go immediately to the heart of the state program by spending the first three years on data collection and inventory, and then an additional two years for the actual program to be developed. Further, the Administration

favored lower amounts for funding in light of the fiscal restraints at the time. The vast number of government entities that would be involved in the implementation of the Act was another complaint voiced against the bill. Finally, the Administration continued to call for sanctions as a necessary mechanism to push for compliance.[114]

With these comments in the open, S. 268 moved to the Senate floor and debate commenced on June 18, 1973. The floor debate lasted four days to final passage on June 21. There were approximately a dozen principal amendments offered on S. 268. Opposition to the bill argued that the legislation would rob states and local governments of the right to plan. It was also called, "federal overkill."[115] As predicted, Senator Jackson introduced an amendment to include sanctions in S. 268. The sanctions were similar to those dropped from S. 632 in 1972. They would withhold federal airport, highway, and land and water conservation funds from states who failed to meet the requirements of the Act. After a lengthy debate, the amendment was rejected 44 yes - 52 no. An amendment by Senator Fannin at the request of the Administration attempted to cut the funding level. It also was rejected by a vote of 27-57. Senator Hanson offered an amendment to tighten up the definition of "area of critical environmental concern." Others perceived his suggestion as an attempt to dilute the criteria of critical areas by detailing. Again the amendment was rejected.

Other activity included two attempts to sever the conditions in S. 268 linking it with the Coastal Zone Management Act of 1972. First, Senator McClure of Idaho tried to add coastal wetlands and marshes back to the definition of "areas of critical environmental concern." By so doing, states would not have to participate in the coastal zone program

in order to receive land use grants. Second, Senator Fannin offered an amendment to delete the provision in S. 268 requiring proportionate spending of funds appropriated for land use and coastal zone programs. Both of these attempts to separate the two programs were rejected. Finally, an amendment was accepted which required states to give attention to housing needs in passing judgment on local planning. It was introduced by Senator Sparkman of Alabama.

Thus, the bill which passed the Senate in 1973 was the same framework as S. 632 with minor additions and few omissions. S. 268 authorized assistance grants principally for the development and implementation of state land use programs. It also called for coordination of land use planning in interstate areas, of federal programs and policies which have land use impacts, and of planning and management of federal lands and adjacent non-federal lands. Other provisions would give grants to Indian tribes to assist the development and implementation of land use planning and management of their lands, and encourage research and training in land use planning and management.

After Senator Jackson had guided a national land use policy act through the Senate for the second time in the last two Congresses, attention was focused on House activity on related national land use proposals. Earlier in the 1st Session while the Senate was considering S. 268, the House Subcommittee on the Environment had held hearings on H.R. 2942 and H.R. 4862 (the Jackson and administration act equivalents) on March 26 and 27. Three more days, April 2, 3, and 4 were also devoted to these bills with the addition of H.R. 6460 introduced by Representative Saylor of Pennsylvania. Following the hearings, Representative Meeds of Washington offered H.R. 7233 to the House for similar consideration.

Representative Udall took the lead in attempting to get a national land use policy through the House. Being chairman of the Subcommittee on the Environment, Udall almost assured a proposal to the Committee on Interior and Insular Affairs on national land use policy.

H.R. 6460 with the short title, "Land Use Policy Act of 1973," was in a similar framework to H.R. 2942, but established more substantive policies with respect to "areas of critical environmental concern." It also required state permit programs to regulate development similar to Senator Nelson's amendment to S. 268. A condition for grant eligibility in H.R. 6460 would require the states to develop policies to guide development in areas of critical environmental concern, and criteria for applying the state's policies to land use decisions.[117] These policies would have to cover at least eight areas covered in the bill.[118] It was remarked that Saylor introduced this bill for environmental interest groups who felt other proposals were weak in dealing with cri tical areas.

Representative Meeds' bill, H.R. 7233, authorized grants to assist states in land use planning and programming, and also to establish a public land policy and provide public land directives. The bill contained sanctions for state non-compliance, but these were more extensive than previous proposals. Sanctions in H.R. 7233 would cover all grant programs that have "substantial impact on land use. Grants could be reduced by half after three years and terminated after five years."[119] The title on public lands established policies for use and management of these lands, as well as provisions for an inventory and identification. In addition each public land management agency would develop and maintain land use plans for all public lands regardless of classification. H.R. 7233

would cover all grant programs that have "substantial impact on land use. Grants could be reduced by half after three years and terminated after five years."[119] The title on public lands established policies for use and management of these lands, as well as provisions for an inventory and identification. In addition each public land management agency would develop and maintain land use plans for all public lands regardless of classification. H.R. 7233 further described the necessary ingredients for the land use plans. Thus, the Meeds bill incorporated the features of the other principal proposals, while strengthening the sanctions and including public lands in one bill.

The five days of hearings resulted in a record of testimony very similar to that produced in the Senate on S. 268. Emphasized issues were the need for national growth or development policies to accompany a national land use policy, the necessity for public participation, concern for proliferating second home development, the need for certainty in governmental land policy, preference for a "forum" for land use issues, planning of Indian lands, and planning and management of public lands. Although these issues were important, the central focus was the use of sanctions to encourage state participation in land use planning programs. Many witnesses mentioned that sanctions were necessary to limit the amount of local politics by pressuring states to assume responsibility in certain crucial land use decisions.

The House Subcommittee on the Environment spent five weeks of mark-up sessions on the principal national land use proposals. The Subcommittee introduced a "clean" bill as H.R. 10294. H.R. 10294 moved up to the Full Committee on Interior and Insular Affairs on September 7. With further amendments the bill was ordered to the House on January 22, 1974 by a

vote of 26-11. It was not until February 13 when the Committee on Interior and Insular Affairs released its report on H.R. 10294.

Finally on February 13, 1974 the House Committee on Interior and Insular Affairs submitted its report on H.R. 10294. In reporting the bill the Committee brought to attention that this piece of legislation was not a "hasty" product, nor was it a "panacea for all the evils resulting from lack of planning in the past."[120] H.R. 10294 was said to embody the major features of all measures considered by the Committee over the past three years. It was the Committee's contention that "the changing land use requirements and public needs necessitate changes in present land use decision-making procedures and institutions."[121] Concurrent with this feeling, the House Report also stated:

> A central theme of H.R. 10294 is that of public involvement. The majority of the Committee believes not only that increased land use planning should take place but also that the public should be involved at every step of the way."[122]

The involvement of the public was held as a crucial factor to help in finding solutions brought about by the conflict between the demand for environmental quality and other competing demands involving land resources. The Committee identified to close relationship between the use of land and the "energy crisis." The Land Use Planning Act was viewed as a "distinct aid. . .in providing a kind of orderly recognition of needs and resources that has been lacking."[123]

H.R. 10294 represented a conscious effort to integrate pertinent ideas on land use planning in what was basically a procedural bill. In the declaration of policy mention was made to the establishment of planning and decision making to assure "in advance" that consideration was given to environmental, social, and economic requirements of present and

future Americans.[124] To meet this objective H.R. 10294 stressed the use of "comprehensive land use planning process."

> Section 104. A comprehensive land use planning process is a planning process in which all land and other natural resources within the state and the costs and benefits of their use and conservation are taken into account. . .[125]

The process outlined in the bill included development of an adequate data base, technical assistance, public involvement, coordination of planning of land-related activities of state agencies, assuring consistency of state and local programs with state planning process, coordination of interstate planning activities, and criteria for designating areas of critical environmental concern, areas which may be impacted by key facilities, large-scale development, and land use of regional benefit. In addition, a whole host of factors which influence the desirability of land for agriculture, industry, forestry, transportation, urban development and other uses would be considered. Finally, the process would develop "explicit substantive" state policies to guide land use in areas of critical environmental concern, and criteria for applying the state's policies to land use decisions in other designated areas.[126]

Following sections of the bill provided for methods and means for the implementation of the planning process. Besides having policies for the four areas designated in the comprehensive planning process, policies would also be necessary for locating new communities and regulating surrounding development, regulating pollution sources, and assuring consideration for a full range of housing opportunities. There were two means of implementation--direct state planning and regulation, or local government planning, using state criteria and with state review.[127] The bill encouraged states to make use of general purpose local governments

for implementation. At the same time, it "prohibited" federal agencies from interceding in management decisions within the framework of a comprehensive land use planning process. Finally, implementation was required to include state authority to regulate uses in "certain" areas and to provide an appeals procedure.[128]

In order to receive planning grants, states must have an eligible state land use planning agency and an intergovernmental advisory council. The agency would be the primary authority with the responsibility for the development and administration of the land use planning process. Here, the Committee emphasized the land use planning process in seeking something more than a program planning department. The advisory council, which is composed of elected officials of local government, would consult, review, and comment on the state land use planning process. The Committee saw this a first step to assure "continued participation by representatives of local government."[129] The Secretary of the Interior was authorized to determine the eligibility of a state on the state's ability to develop and administer a comprehensive planning process. Section 109 of H.R. 10294 provided an appeal procedure for states found ineligible for grants. In order to provide an effective appeals procedure to limit "arbitrary and capricious action," the appeal is made to the U.S. Circuit Court of Appeals. In many respects this was a response to those who felt the Secretary had too much power in administering land policy.

In reference to Indian lands, the Committee directed that a study be conducted to report on the legal, economic, social, and environmental factors related to the control and regulation of Indian lands. Although this section was highlighted as a separate title, it was a more cautious approach than other bills which called for planning Indian lands. To

round out its comprehensive approach, H.R. 10294 declared a policy for planning and management of public lands. It called for inventory and identification, development and maintenance of land use plans, and public involvement in the planning process for these lands.

To assist in the administration of the Act, Section 401 established an Interagency Land Use Policy and Planning Board. It was composed of an appointee of the Secretary and representatives of twelve agencies. Its primary function was to provide information and advice on the rela tionship of land use planning to programs of agencies on the Board. Other duties were essentially advisory to the Secretary.

Finally, the Secretary was also responsible for a study on the needs and form for stating national land use policies.

The cost of H.R. 10294 was approximately at a rate of $100 million per year for an eight-year period, which was the same as S. 268.

After having been reported to the House, H.R. 10294 received an unexpected setback before the House Rules Committee. On February 26 the Committee voted 9-4 to postpone indefinitely consideration of H.R. 10294. The National Journal reported that the sidetracking of the legislation by the Rules Committee came after the White House dropped its support for the bill.[130] The principal opponent to the bill was Sam Steiger of Arizona. His opposition was based on the feeling that H.R. 10294 permitted too great an extension of federal authority. In its place, he attempted to substitute his own bill unsuccessfully during Interior Committee consideration. The Steiger bill, H.R. 11325, authorized $200 million over five years for land use planning. There were no provisions for federal requirements for the planning process, and for state oversight of local planning decision. Following this bill, both Representative

Steiger and Rhodes, also of Arizona, introduced H.R. 13790 which was very similar to H.R. 11325 with no state and federal requirements for local land use planning. H.R. 13790 became the proposal to receive White House support although the Interior Department favored H.R. 10294, the stronger bill.

Committee reactions after the vote against letting H.R. 10294 go to the floor, especially from those who opposed the bill, pointed to a lack of enough information about the bill on which to base a decision. Responding to this situation, Representative Udall conducted additional hearings on April 23, 25, and 26. The testimony did not bring forth any surprising issues. Much of this material had been covered in previous Senate and House hearings. Recurring themes were voiced by supporters and opponents to the bill. Opponents continued to stress the need to assure that existing private property rights and the free enterprise system would not be infringed upon by land policy legislation. Some witnesses felt that state and federal authority was already too great, and much of the cause for present land use problems. In a twist of the same theme, supporters of a national land policy attempted to make Committee members aware of the fact that in the absence of a formal land policy statement, land decisions were still being made which did not provide for "compensation", or even public participation. With the increasing desire of local communities to control growth, the situation necessitated policy direction. Mention was also made of the adopted and on-going state land use planning programs for fielding questions on the need for planning and its public acceptance. In summary of these three days of hearings, the general consensus favored a policy for land use planning, but only if it could be implemented with assurances for equity,

due process, fairness, and for the public interest whatever that may be.[131]

On May 15 the House Rules Committee reversed its earlier decision and sent H.R. 10294 to the House floor by a vote of 8-7. At this point, Steiger and Rhodes were prepared to offer their bill as a substitute on the House floor, but observers looked optimistically at the expected close vote. This optimism was short-lived as the House on June 11 rejected the rule under which H.R. 10294 was being brought to the Floor by a vote of 204-211. The parliamentary move prevented any substantive debate and technically sent the bill back to the House Interior and Insular Affairs Committee.[132] This left no time in the remainder of the Session for reconsidering the proposal.

Assessment of the bill's failure was varied. First, the lack of White House support was an obvious factor on such a controversial bill. Second, the substance of H.R. 10294 still raised "genuine doubts and opposition in the minds of many members, particularly those from areas such as the west and south where private owners often control extensive acreages for agriculture and grazing." Third, fear that the bill would erode property rights could not be erased, and confusion prevailed. Fourth, some felt the vote reflected distrust of more government regulations, related to the wake of Watergate. The fifth point was the fact that 1974 was an election year in which many members wanted to avoid a recorded vote on this issue. Sixth, some saw a move by Udall to placate critics with a package of amendments, which would weaken the proposal, as significantly giving way before the floor debate. Finally, lobbying groups opposed to H.R. 10294, mounted an extensive effort in Washington and country-wide. The major opponent was the Chamber of Commerce. Although

the failure of the bill was termed a major setback, supporters looked forward to the next Congress for another try.

CONCLUSION

We have traced in this paper the development of potentially significant pieces of land use legislation over the span of five Congressional Sessions. It was the intent of this paper to use the "public record" established by Congress in considering national land use policy to identify the perceived problems and issues in land use, as well as to describe the chronological development of these policy proposals. In order to draw some conclusions from the material presented here, it seems logical to evaluate in a very general way how well the Congressional proposals for national land use policy met the concerns raised by the perceived problems.

To reiterate we observed that the symptoms of land use problems were urban sprawl, environmental degradation, and land policy conflicts. Each symptom category was interrelated with the others and the scope of the symptoms ranged from very local incidents to national resource problems. The reasons behind the symptoms were many. This accepted the fact that land use problems were pervasive and literally tied to almost every major social, economic, political, and environmental concern. Given this situation, it was a general perception that land problems were caused by the inability of both public and private decision-making institutions to accurately consider the implications of their decisions on land use patterns in any systematic or comprehensive way. Recommendations from witnesses at the hearings and from government studies stressed the need for guiding policies to help make land use decisions of greater than local concern and for a planning mechanism to carry out land use policies, both of which will assure sound land use planning. Therefore, we will focus our appraisal of national land use legislation on these two points.

Need For Guiding Policies

During the Senate debate on S. 632 in September 1972, Senator Muskie of Maine made the statement in his opening remarks, preceding his numerous amendments, that the bill before the Senate at that time created an outline for national land use policy with no substance. "(S. 632) declares a national policy but concedes to several states responsibility to determine what that policy should be." The Senator proceeded to suggest an amendment so that "our national land use program includes a true national policy--a clear statement of statutory indices to establish the basic elements of good land use." Although there was not wide spread agreement with Senator Muskie's statement, he raised a critical issue before Congress--would they in fact develop national land use policies? His point was based on a perceived need for guidance in land use decisions on one hand and a policy proposal, which did not imply specific land use policies, on the other.

Under closer examination S. 3354, S. 632, S. 992, S. 268, and S. 924 provided only grant assistance programs for the development and implementation of a process or means for decision-making. Under the rubric of comprehensive planning S. 3354 called for the development of statewide plans which incorporated traditional planning techniques, but over a larger area. The statewide plans were to enhance the quality of the environment, conservation of public resources, and insure that regional requirements were considered. The land use plans would represent the result of these factors "fitted" together in a coordinated and consistent fashion with federal, state, and local needs and desires. S. 992 rejected the idea of comprehensive planning and focused on controlling certain uses, and certain areas in need of protection. Similarly, the

other major national land use proposals considered by Congress fell on one side or the other, or a combination of the two. Without considering the merits of each method in a benefit-cost, policy analysis approach, it is quite obvious that there is something missing in both proposed methods, which is necessary for sound decision making on the landscape. The missing components, which others have labeled part of the "policy vacuum", are the policy directions for the larger systems which influenced and are influenced by land use decisions.

In the policy planning process there are three levels of policy. The first is the most general, and the least operational by itself. It is the goal statement or objective which provides direction. The second level specifies in general terms the way to achieve the stated objectives. The third level is represented by detailed policies which are readily translated in to "action recommendations." The development of policy at these three levels is a function of the process.

> . . .in a very fundamental sense the planning process must play an important role in supplying policy alternatives and pressing for decisions from the earliest and broadest level of policy formulation on down to the more detailed levels of policy determination. This aspect of the planning process can therefore be considered one of supplying alternatives at progressively more detailed levels of decision-making, with each successive stage in policy formulation, building on previously made choices of a more general character.[133]

The policy planning process is a dynamic process. It can be conceptualized as a major loop tying the whole process together. In addition there are minor feedback and feedforward loops between steps, within steps, and between different policy levels. Therefore the development of policy at all three levels is the key to a successful process and outcome.

What Senator Muskie was suggesting on the Senate floor was the need for policy at the first level. Similar arguments were made by advocates of a national growth policy. They argued that a national land use program to assist statewide planning without policies to guide decision makers in the statewide planning process could not relieve the situation on the landscape. National land use legislation proposed during the period researched in this paper could be placed at the second policy level. S. 632, S. 992, S. 268, and others outlined the elements of systematic decision making processes all of which could incorporate the issues, which were raised in describing land use problems, and which are pertinent to sound land use planning.

Given the planning or decision making processes of the proposed national land use policies, implementers of the process are asked to define in more detail areas of critical environmental concern, areas suitable for key facilities, land use of regional benefit, and criteria for large-scale development, to name a few. What are the values to be placed on these areas? Where do they come from? The logical answer is the first level of the policy planning process. At this level planning involves determinations of the goals or ends which will guide subsequent action. It involves decisions concerning the scope and content of action, and decisions which must ultimately be based on an established or accepted value system.[134] Planners have come to call this normative planning. It is contended here that without the development of national goals, there continues to be no proposed land use policy which can meet land use problems with success. Thus, it would seem to be the responsibility of Congress to define the <u>public interest</u> on land use and related issues in order to develop the goals or directions for national land use planning.

To carry this one step further, if appears on the surface that the Congressional proposals for national land use policy met the problems head on. For example, three commonly cited causes of land use problems were lack of critical area protection, lack of coordination between programs related to land of the same or different levels of government, and lack of consistent land use policies. By providing a mechanism (a process) which included elements focused on these points, the proposed land policy legislation assumed that to insist on control, coordination, and consistency by state and federal agencies would eliminate the conflict involved in each situation. The fact remains that these agencies in their present structure still have different objectives to meet, and conflict continues. If these conflicts are resolved without national goals, then one must ask if policy is being made for and by the public interest, or by imposition. Does one want to accept the unwritten assumptions?

At the present time only a few states have a single land use policy or group of complementary policies which incorporate or make consideration for all the recognized implications of land use decisions. It is suggested here that the following areas are in need of national goals to complement the proposed national land use planning programs in Congress:

--National growth policy

--Natural resources and materials policy

--Energy production and consumption policy

--Food production and consumption policy

--Social quality--(housing choice, transportation alternatives, employment opportunities).

With national policies for these general areas the land use planning and decision making process would have the necessary first level direction.

From the hearing testimony, Committee reports, and floor debate, it can be concluded that Congress generally understood the scope and nature of land use problems in the United States but was unable to assess the outcomes and impacts of adopting the proposed policies to make a policy choice. The evidence of the crucial role land use decisions play in the future of the country was clearly stated in government documents and accepted by nearly all speaking for or against national land use policies. Section 403 of H.R. 10294 reflected Congressional recognition of the issues. The section authorized the investigation and study of the need for and form of stating national land use policies. The study was to include policies which--

1) insure that all demands upon the land including economic, social, and environmental demands are fully considered in land use planning;
2) give preference to long term interests of the people of the state and nation and insure public involvement as a means to ascertain such interests;
3) insure the protection of the quality of the environment and provide access to a wide range of environmental amenities for all persons;
4) encourage the preservation of a diversity of ecological systems and social, economic, and man made environments;
5) protect open space for public use or appreciation and as a means of shaping and guiding urban growth;

6) give preference to development which is most consistent with the control of air, water, noise, and other pollution and prevention of damage to the natural environment;

7) insure that development is consistent with the provision of urban services, including education; water, sewer, and solid waste facilities; transportation; police, and fire protection;

8) insure the timely siting of development, including key facilities necessary to meet national and regional social or economic requirements; and

9) encourage the conservation and wise use of energy and other natural resources and insure the supply of such resources to meet demonstrable demand based upon such conservation use.[135]

More importantly this section reflected that Congress was unsure of which way to go on any of the crucial issues in land use decision making. These areas of policy study are reminiscent of the policy declarations of earlier national land use policy proposals, and represented the failure of Congress to move in the land policy area.

There can be a number of reasons why Congress failed to develop a national land use policy. It is the final statement of this paper. That, in addition to not being able to assess the viability of possible policy solutions, Congress could not effectively legislate because:

1) there was no sense of urgency to resolve these problems at the national level.

2) it was politically infeasible to deal with national land use policy.

3) the legislative structure hindered the development of a comprehensive policy.

4) the administrative structure could not be asked to implement a comprehensive policy.

These statements are only possible explanations for the actions exhibited on national land use policy over the last five years and provide adequate, open ended questions for further research.

LIST OF NOTES

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[2]Editor, "Symposium: New Perceptions in Land Regulation." Journal of American Institute of Planners. Vol. 41 #1, January 1975.

[3]C. L. Madden, "Land as a National Resource." The Good Earth of American. New York, 1974, p. 6.

[4]U.S. Congress. Senate. Committee on Interior and Insular Affairs. Readings on Land Use Policy 94th Congress, 1st Session, June 1975, n.p.

[5]National Environmental Policy Act of 1969 (P.L. 91-190) Section 101(b)(5).

[6]Council of Environmental Quality. Environmental Quality First Annual Report. Washington, 1970, p. xi.

[7]U.S. Congress. House Committee on Interior and Insular Affairs. Land Use Planning Act of 1974. House Report 93-798, 93d Congress, 2d Session, February 13, 1974, p. 23.

[8]U.S. Congress. Senate. Committee on Interior and Insular Affairs. National Land Use Policy Hearings on S. 3354. 91st Congress, 2d Session, March 24, April 28 and 29, 1970, p. 29.

[9]U.S. Congress. Senate. Committee on Interior and Insular Affairs. National Land Use Policy--Backround Papers. 92d Congress, 2d Session, April 1972, p. 6.

[10]Ibid.

[11]The Good Earth of America. op.sit., p. 23.

[12]Advisory Commission on Intergovernmental Relations, Urban and Rural America: Policies for Future Growth. 1968, p. 12.

[13]Council of Environmental Quality. Environmental Quality Fifth Annual Report. Washington, 1974, p. 5

[14]Council of Environmental Quality. Environmental Quality Fourth Annual Report. Washington, 1973, p. 302.

[15]National Land Use Policy--Backround Papers. p. 4.

[16]House Report 93-798, p. 91.

[17]A.C.L.R. op. cit. p. 60.

[18]U.S. Congress. Senate. Committee on Interior and Insular Affairs. National Land Use Policy Hearings on S. 632 and S. 992. 92d Congress, 1st Session, June 22 and 23, 1971, p. 485.

[19]M. Redding and B. T. Parry. "Land Use: A Vital Link to Environmental Quality." in Curtis (ed.) Land Use and Environmental Quality. Washington, 1973, p. 5.

[20]Environmental Protection Agency Youth Advisory Board. Land Use and Environmental Protection. Washington, 1973, p. 4.

[21]Environmental Quality-Fourth Annual Report 1973. p. 316.

[22]E.P.A. Youth Advisory Board. p. 11-23.

[23]Ibid. p. 23.

[24]Richard H. Slavin. "Toward A State Land Use Policy". Land Use Annual. Vol. 4, #4, Fall 1970, p. 42-54.

[25]Environmental Quality-First Annual Report 1970. p. 11.

[26]Environmental Quality-Second Annual Report 1971. p. 23.

[27]A.C.L.R. op.cit. p. xv.

[28]Ibid.

[29]Ibid, p. 52.

[30]Ibid. p. 60-61, p. 124.

[31]Ibid. p. 61.

[32]Ibid. p. 60.

[33]Ibid. p. 129.

[34]Ibid.

[35]Ibid. p. 131, 172.

[36]National Commission on Urban Problems, Building the American City House Document 91-34, p. 3-7.

[37]Ibid. p. 7-9.

[38]Ibid. p. 9-18.

[39]Ibid. p. 18-20.

[40]Ibid. p. 20-30.

[41]Ibid. p. 217-224.

[42]Public Land Law Review Commission. One Third of the Nation's Land. Washington, 1970, p. 51, 52.

[43]Ibid. p. 57.

[44]Ibid. p. 42.

[45]Ibid. p. 55.

[46]Ibid. p. 68.

[47]Ibid. p. 74.

[48]Ibid. p. 67-88.

[49]Ibid. p. 2.

[50]U.S. Congress. House. Committee on Interior and Insular Affairs. Land Use Planning Act of 1974. House Report 93-798, 93rd Congress, 2d Session, February 13, 1974, p. 27-28.

[51]U.S. Congress. Senate. Committee on Interior and Insular Affairs. National Land Use Policy. Hearings on S. 3354, 91st Congress, 2d Session March 24, April 28 and 29, 1970, p. 2-3.

[52]Ibid. p. 3-4.

[53]Ibid. p. 4.

[54]The areas referred to here are population characteristics, migration trends and densities, economic trends, urban and rural growth, public works and capital improvements, ecological features, present and future land use requirements, finances for planning, and other necessary information.

[55]Senate. Hearings on S. 3354, March 24, April 28 and 29, 1970. p. 607.

[56]These are regional requirements for material goods, natural resources, energy, recreation, and environmental amenities.

[57]Senate. Hearing on S. 3354. March 24, April 28 and 29, 1970. p. 607.

[58]Ibid. p. 30.

[59]U.S. Congress. Senate. Committee on Interior and Insular Affairs. National Land Use Policy. Hearing on S. 3354, 91st Congress, 2d Session, July 8, 1970, p. 454.

[60]U.S. Congress. Senate. Committee on Interior and Insular Affairs. National Land Use Policy, Backround Papers. 92d Congress, 2d Session, April 1972, p. 133.

[61]House Report 93-795, p. 28.

[62]Ibid. p. 29

[63]Areas of environmental concern are areas where uncontrolled development could result in irreversible damage to important historic, cultural, or esthetic values or natural systems or processes which are greater than local significance or as a result of natural hazards of greater than local significance. These include coastal zones and estuaries, shorelands,

floodplains, rare or valuable eco-systems, scenic or historic areas, and areas of similar characteristics.

[64]S. 992, Sec. 101 (a)(1-7).

[65]Senate. National Land Use Policy-Backround Papers. April 1972, p. 196-197.

[66]Requirements are listed here in paraphrased form, as taken from S. 992 (February version).

[67]Senate. National Land Use Policy-Backround Papers. April 1972, p. 191.

[68]Ibid. p. 206.

[69]Senate. National Land Use Policy-Backround Papers. April 1972, pp. 27-38. U.S. Congress. Senate. Committee on Interior and Insular Affairs. National Land Use Policy Hearings on S. 632 and S. 992. 92d Congress, 1st Sessions, Part I May 18 and June 7, 1971 and Part II June 22 and 23, 1971.

[70]Ronald L. Shelton. The Environmental Era: A Chronological Guide to Policy and Concepts, 1962-1972. (Ph.D. dissertation) Cornell University, 1973. p. 434.

[71]Richard Rubino and William Wagner. The State's Role in Land Resource Management. Lexington, Kentucky, 1972. n.p.

[72]Fred Bosselman and David Callies. The Quiet Revolution in Land Use Control. Washington, 1971, n.p.

[73]E. H. Haskell and V. S. Price. Managing the Environment: Nine States Look for New Answer. New York, 1971, n.p.

[74]U.S. Congress. Senate. Committee on Interior and Insular Affairs. National Land Use Policy Legislation 93d Congress. 93d Congress, 1st Session, April 1973, p. 15.

[75]U.S. Congress. Congressional Record 92d Congress, 2d Session, September 19, 1972, p. 31217.

[76]Ibid.

[77]U.S. Congress. House. Committee on Interior and Insular Affairs. National Land Policy, Planning, and Management Act of 1972 House Report 92-1306. 92d Congress, 2d Session, August 7, 1972, n.p.

[78]Shelton, p. 438.

[79]National Land Use Policy, 93d Congress, p. 37.

[80]U.S. Congress. Senate. Committee on Interior and Insular Affairs, National Land Use Policy Legislation, 93d Congress, An Analysis of Legislation Proposals and State Laws. Committee Print. April 1973, p. 6.

[81]Ibid. p. 593.

[82]Senate Bill 792 Section 604 (a)(b).

[83]S. 792 Section 602(c)(A-k).

[84]S. 792 Section 602(b)(2).

[85]National Land Use Policy Legislation, 93d Congress, p. 66.

[86]S. 924 Section 203(c).

[87]National Land Use Policy Legislation, 93d Congress, p. 79.

[88]Ibid.

[89]Ibid. p. 81.

[90]Ibid. p. 82

[91]Ibid.

[92]Ibid. p. 87.

[93]Ibid. p. 84.

[94]U.S. Congress. Senate. Committee on Interior and Insular Affairs. Land Use Policy and Planning Assistance Act-Hearings on S. 268 Part I. 93d Congress, 1st Session, p. 198-200.

[95]National Land Use Policy, p. 85.

[96]S. 268 Section 501(e).

[97]National Land Use Policy, p. 85.

[98]Ibid, p. 84.

[99]Hearings on S. 268 Part I, p. 163.

[100]Hearings on S. 268 Part III, p. 2.

[101]S. 268 Amendment by Nelson, Section 602(a)(1-3).

[102]Hearings on S. 268 Part III, p. 7.

[103]Hearings on S. 268 Part IV.

[104]U.S. Congress. Senate. Committee on Interior and Insular Affairs. Land Use Policy and Planning Assistance Act. Report on S. 268. Senate Report 93-197, June 7, 1973, p. 49-50.

[105]Ibid. p. 53.

[106]Ibid.

[107]Ibid.

[108]Ibid. p. 55.

[109]Ibid. p. 59.

[110]Ibid. p. 54.

[111]Ibid. p. 49.

[112]Ibid.

[113]James A. Noone, "Environmental Report/Senate Committee Acts on Land Reform; Bill would aid States' Planning Role." National Journal, June 2, 1973, p. 794.

[114]Ibid.

[115]James A. Noone, "Environmental Report/Congress moves toward National Land Planning and Management Legislation." National Journal, June 30, 1973, p. 964.

[116]Congressional Record, June 18, 19, 20, 21, 1973.

[117]H.R. 6460 Section 302(a)(9)(A-H).

[118]The areas were: 1) esthetic and ecological value of wetlands; 2) susceptibility of wetland to permanent damage; 3) value of watershed land for storing water; 4) value of managing upland watershed for water retention; 5) direct and indirect costs of development in floodplains; 6) . . .in areas of unstable soil; 7) the undesirability of locating in areas of critical environmental concern; and 8) values and characteristics of areas of critical environmental concern.

[119]H.R. 7233 Section 206(b).

[120]U.S. Congress. House. Committee on Interior and Insular Affairs. Land Use Planning Act of 1974. Report on H.R. 10294 House Report 93-798. 93d Congress 2d Session, February 13, 1974, p. 23.

[121]Ibid. p. 27.

[122]Ibid. p. 24.

[123]Ibid. p. 30.

[124]H.R. 10294 Section 102.

[125]Ibid. Sec. 104.

[126]Ibid. Section 104(i).

[127]A combination of the two was also an option.

[128]H.R. 10294 (Feb. 13) Sec. 106.

[129]House Report 93-798.

[130]James Noone, "Environment Report/Land Use Bill Detailed after White House Ends Support" National Journal, March 9, 1974, p. 368.

[131]U.S. Congress. House. Subcommittee on the Environment National Land Use Policy Act of 1974. Hearing on H.R. 10294. 93d Congress, 2d Session, April 23, 25, and 26, 1974.

[132]James Noone, "Environment Report/House Deals Fatal Blow to 1974 Land Use Legislation." National Journal, June 22, 1974, p. 928.

[133]F. Stuart Chapin, Urban Land Use Planning (Urbana, Illinois, 1965), p. 351.

[134]W. Goodman and E. Freund, Principles and Practice of Urban Planning. (Washington, 1968), p. 320.

[135]H.R. 10294 Section 403(a)

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