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Toward A National Growth Policy

Vance Hartke*

Can one live in a society that is out of control? That is the question posed for us by the concept of future shock. For that is the situation we find ourselves in. If it were technology alone that had broken loose, our problems would be serious enough. The deadly fact is, however, that many other social processes have also begun to run free; oscillating wildly, resisting our best efforts to guide them . . . . Urbanization, ethnic conflict, migration, population, crime—a thousand examples spring to mind of fields in which our efforts to shape change seem increasingly inept and futile.


Introduction

Alvin Toffler describes "future shock" as the shattering stress and disorientation induced by too much change in too short a time.¹ But what awaits America in the wake of its exponential rate of change and growth is not only future shock, but the end of existence as we know it.

America is beset by a number of problems that continue to grow more rapidly than the government's ability to limit or contain them. Since 1900,

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¹ A. TOFFLER, FUTURE SHOCK 2 (Bantam ed. 1970).
the country has undergone a demographic revolution. In terms of total numbers, our population has increased from 76 million in 1900 to almost 205 million in 1970.² This represents an additional 129 million people that our society has been called upon to accommodate over the past 70 years. By the year 2000, the population will soar to between 270 and 320 million.³

More alarming is that America, as a metropolitan nation, will see an even greater population increase in the urban areas. By 2000, present trends will concentrate 83 percent of the population in the ten largest urban regions occupying one-sixth of the national land area.⁴

Can our society cope with these enormous increases in population and the resulting changes in settlement, land use and resource consumption?

These massive increases and concentrations of population will test the nation's ability to preserve the quality of the environment and could nearly deplete our natural resources.⁵

Along with these problems, however, will come an even more serious threat—the increasing separation of black and white citizens in the nation's cities. In 1960, 78 percent of all minorities residing in metropolitan areas lived in the central city.⁶ With a projected increase in dispersal of blacks, there will be some change in this concentration, but by 1985, three out of every four urban blacks will still live in the central city. In contrast, in 1960 almost one half of all whites in metropolitan areas resided in the central city. By 1985, seven of every ten whites in metropolitan areas are expected to live in the suburbs. Thus, the basic conclusion of the Kerner Commission Report—that "our nation is moving toward two societies, one black; one white—separate and unequal"—will have been proved accurate.⁷

The vast national expansion into the suburbs generating racial polarization in our metropolitan areas is not due solely to population increases and

⁴. Population, supra note 2, at 36-37.
⁶. Hodge & Hauser, The Challenge of America's Metropolitan Population Outlooks 1960-85, at 25-27 (1970). These overall figures obscure some striking regional differences. In the older cities of the Northeast and North Central Regions, blacks would continue to be very highly concentrated in the central cities, the percentages being 82 and 89 respectively, representing little change from 1960.
decreases but also to migration. This migration is reinforced by the relocation of many corporations and governmental facilities—and the jobs they bring—to the suburbs.8

The suburbs have also contributed to the disjointed growth of our metropolitan areas into increasingly segregated and financially unbalanced sectors through exclusionary zoning—precluding lower income people and other minorities.9 Still another cause of this social and economic imbalance arises because local public services depend so heavily on locally raised revenues produced by locally applied taxes, principally the property tax.

Land use, especially in our metropolitan areas, is another example of tremendous waste and mismanagement. Even though “land is our most valuable resource,”10 long-term decisions in this field have been made on the basis of expediency and short-term economic considerations. Mountains have been carved by strip mines, wet lands dredged and filled, and suburban sprawl allowed to profligate. Once land is committed to a specific use—be it social, economic, or environmental—it may be impossible to use it differently in the future.

Today, the effects of the misuse of the environment and uncontrolled growth are only just beginning to be felt and understood. This country, its character, and its people have developed, in large part, because of our abundance of natural resources. Perhaps, then, our reckless growth and environmental misuse of our natural resources can best explain the source of the social problems that confront the nation today. Controlling the nation’s growth is not only an end in itself, but the key to understanding the future of American domestic policy.

Only if we examine our past mistakes and try to understand the full ramifications of uncontrolled national growth, will we be able to bring sense


to our government's domestic policies and practices. It is imperative that we act now to adopt a national growth policy which will both protect our heritage of irreplaceable values and provide guidance for future national development.

It is the purpose of this article to determine why the necessity for a comprehensive national growth policy has arisen and the shape that policy should take in guiding this nation’s future.

Early History

To comprehend the dilemma the nation presently faces in an era of almost uncontrolled growth, an historical examination of how America planted the seeds for future chaos is necessary.\textsuperscript{11}

The debate over national growth and development began with the controversy concerning the utilization of public lands in the Constitutional Convention of 1787 when the original states ceded their claims to western frontier land to the new central government.\textsuperscript{12} The question presented was whether the ceded land, and any to be acquired later, would be used for the benefit of the separate states, the central government, or individual settlers. The resolution of this question would shape the character of American life.

The debate was prompted by various pressures placed upon the Congress during the critical period following the Revolution.\textsuperscript{13} First, Congress, without means of securing revenue, had promised land to soldiers in payment for their services. Second, the national government desired to utilize the rich frontier territories in the public benefit, while providing adequate defense against the Indian tribes. Further, a uniform system of government was essential for the orderly maintenance of the newly-acquired lands. And, finally, the country was confronted with the pressures from immigration and inadequate housing in the nation's cities.

The result was the first rural development act, the Land Ordinance of 1785,\textsuperscript{14} which provided for an accurate survey, recording, and uniform requirements for townships, in the first national attempt to distribute public land.

\begin{itemize}
  \item 13. Hibbard 32-33.
  \item 14. 28 J. Cont. Cong. 275 (1787). For an excellent treatment of the 1785 Ordinance, see V. Carstensen, The Public Lands (1968).
\end{itemize}
After the adoption of the Constitution, the federal policy towards national development was modified by the use of a credit financing system and by allowing money from land sales to be used by the newly created western states. Settlers were encouraged to purchase public lands in the belief that this would spur development and increase the value and utility of the remaining lands. Subsequently, the national policy shifted from one of sale to private citizens, to one of donation of land to the new states. The new states, in turn, sold or ceded the land to private citizens. One result of this state administered program was the monopolization of vast tracts of land by private individuals. By altering the earlier policy of raising revenue to one of donation, Congress stimulated the development of educational and transportation systems.

The vast flow of settlers to the West, however, still preceded the development of the country in the 1800's. Despite the need for Congressional initiative, legislation generally echoed what had already occurred rather than what was needed to shape a futuristic national development policy.

However, sentiment was growing for a new policy. The southern system of free land grants and the apparent ease of New Englanders in acquiring land ownership resulted in much dissatisfaction with the early federal land programs. Consequently, measures to prevent the common practice of intrusion onto public land before the land was surveyed and readied for sale were largely ineffectual and the federal government was often compelled to legitimize earlier trespasses upon its land. The demand for systematic land reform continued to grow.

The reform took its shape in the Homestead Act of 1862, which offered 160 acres of surveyed public land free to anyone who would reside upon it and farm it. Two underlying theories were central to the Homestead Act. First,

[i]that the free grant to actual settlers, in consideration of the expenses they incur in making settlements, . . . which are usually fully equal to their actual cost, and of the public benefits resulting therefrom, . . . is a wise and just measure of public policy. . . .

15. HIBBARD 83. See also C. F. EMERICK, THE CREDIT SYSTEM AND THE PUBLIC DOMAIN (1899).
16. For a comprehensive analysis of Federal land policies in the 19th century, see H. GEORGE, OUR LAND AND LAND POLICY (1901).
17. See generally HIBBARD, Chapter IV, at 56.
19. HIBBARD 171-98.
21. Platform of the Free Soil Democrats (1848), cited in HIBBARD at 357.
And, further,

[t]hat all men have a natural right to a portion of the soil; and that, as the use of the soil is indispensable to life, the right of all men to the soil is as sacred as their right to life itself. That the public lands of the United States belong to the people and should not be sold to individuals nor granted to corporations, but should be held as a sacred trust for the benefit of the people, and should be granted in limited quantities free of cost, to landless settlers.22

While homesteading did not preempt other federal land policies as its sponsors had hoped, it did result in grants to settlers of almost 300 million acres of public land and served as a major impetus to westward migration.23

Another key to the rapid development of the West—was the system of land grants to the railroads. The earliest railroad grants, including grants of land in aid of construction as well as rights of way or easements, were made directly to the states on behalf of the railroads.24 Later, however, Congress determined that this indirect subsidy made federal control impractical, henceforth, grants were made directly to the railroad companies.25 It seems clear that Congress, in its desire to develop the West, was overly beneficent to the railroads. In his famous novel, The Octopus, Frank Norris described the railroad's looting of the federal government's treasury and the ruin of many small farmers in the West.26 The companies advertised extensively in Europe and the eastern United States encouraging many settlers to buy and develop lands in the West. The rail system which emerged united new undeveloped areas with the commercially established East, resulting in economic expansion on a national scale.27

The demand for reform increased and, in 1877, resulted in the Desert Land Act.28 The Act gave the Secretary of the Interior the authority to withdraw irrigable land from disposal or market processes until irrigation works, financed by the Federal government, were constructed. Even though much of the land came into the hands of large growers, this was another incentive to development.29

22. Id.
23. HIBBARD 408-09.
24. For a comprehensive treatment of western railroad growth, see V. CARSTENSEN, THE PUBLIC LANDS 121-80 (1968) [hereinafter cited as THE PUBLIC LANDS].
25. Id.
27. THE PUBLIC LANDS 135.
29. HIBBARD 424-55.
Even at the height of economic pressure for increased land development on the frontier, a few voices were raised against the rapid depletion of the nation's resources and the need for better land management. Some were upset with the large private land holdings that had been carved out of the public domain.\(^{30}\) Others were alarmed at the tremendous decrease in the amount of federal lands, with only half of the original public land under state or private control by 1900.\(^{31}\)

Very little concern was given in our early "growth" policies to the specific physical characteristics of land or of its suitability for private uses. It had been assumed that the whole purpose was to transfer public lands to private hands as quickly as possible, with little attention given to the kind of private ownership that developed. The cycle of clearing land, cultivating it until it was exhausted, abandoning it, and moving westward to clear new land continued throughout the 1800's. The result was that vast areas of land were cleared, forests were destroyed, erosion occurred, and the seeds for environmental disaster planted. But the general public was quiescent, as yet unconcerned with the misuse of the land.\(^{32}\)

Eventually, the growing public awareness of the disaster led to Congressional action. In 1891, the Forest Reserve Act\(^ {33}\) authorized the President to reserve from disposal public land wholly or partially covered by large stands of timber. The land disposal policy of the 19th century was further modified, if not eliminated, with the passage of the Taylor Grazing Act in 1934.\(^ {34}\) Aimed at alleviating the steady deterioration of western range land, it authorized the Secretary of the Interior to establish grazing areas on the remaining public domain and to issue permits for their use. More importantly, a subsequent amendment directed the Secretary to classify 150 million acres of public land according to their most suitable use.\(^ {35}\) Once classified, the land would be marked either for retention or disposal. The retained land would be subject to intensive control by the government, which was to consider the best utilization of the land in light of competing demands for its use.

In the East, modern urban land use regulation began in New York City in 1916, when Fifth Avenue merchants became alarmed at the pace of en-


\(^{31}\) Id.

\(^{32}\) Id.


croaching industrial development on the downtown shopping area.\textsuperscript{36} As originally conceived, zoning was a radical departure from traditional notions about private property use, which previously had been limited by little more than the law of nuisance.\textsuperscript{37} By 1922, reformers had persuaded the federal government to propose a Standard Zoning Enabling Act as a guide to the states.\textsuperscript{38} Many states responded with alacrity by enacting laws which authorized local governments to classify and control land uses according to a comprehensive plan.\textsuperscript{39} The main concern of these laws was to create local regulation with little state oversight. The constitutionality of the new technique was tested and upheld in 1926 by the United States Supreme Court in the historic case of \textit{Village of Euclid v. Ambler Realty Co.}\textsuperscript{40}

The nation did not experiment with national central planning until prompted by the depression eight years later. In 1934, an Executive Order\textsuperscript{41} created the National Resources Board to: (a) gather, prepare, and provide the President with recommendations and information that would be helpful to the planned development and use of land, water, and other natural resources; (b) consult and cooperate with federal, state, municipal and private planning and research agencies in carrying out its duties; (c) make note of all proposed federal projects involving the acquisition of land and land research projects; and (d) in an advisory capacity, provide agencies with information or data pertinent to their projects. All executive agencies were to inform the Board of projects before actual work was undertaken.\textsuperscript{42}

Advisory committees were formed and, on the national level, the Board began planning and coordinating a national public works program. The Board also considered population trends, how to deal with the redistribution of economic opportunities, and the future availability of water and mineral resources.

While planning for the use of various resources was included within the scope of the Board's activities, land planning was a major aspect. In an early report,\textsuperscript{43} the Board's committee on land planning concerned itself with the retirement of submarginal lands, resettlement policies, programs for national parks, irrigation of western lands, wetlands, and the ef-

\textsuperscript{36.} For general information, see statement of Russell Train, Chairman, Council on Environmental Quality, \textit{Hearings on National Land Use Planning Before the House Comm. on Interior and Insular Affairs}, 92d Cong., 1st Sess., pt. 1, at 101 (1971).
\textsuperscript{37.} \textit{Id.}
\textsuperscript{38.} \textit{R. Anderson, 4 American Law of Zoning}, § 26.01 (1968).
\textsuperscript{39.} \textit{See note 36, supra.}
\textsuperscript{40.} 272 U.S. 365 (1926).
\textsuperscript{41.} Exec. Order No. 7,065, June 7, 1935.
\textsuperscript{42.} \textit{See D. Hagman, Urban Planning and Land Development Control Law} 20 (1971) [hereinafter cited as \textit{Hagman}].
\textsuperscript{43.} National Resources Board Report 89-252 (1934). \textit{See also Hagman 20.}
fect of tenancy as contrasted with ownership on land use patterns. In cooperation with the pertinent federal agencies, work was also done on agricultural land resources and requirements, soil erosion, forest resources and demands, government land policies and problems, open space preservation, and the general inadequacies of land use planning.\textsuperscript{44} The activities of the Board were progressive, creative, and controversial.\textsuperscript{45} Despite repeated statements that the Board's function and intent was to be only advisory, agencies of the federal government, then as now, jealously resisted coordination and interference with their own projects. The Board was dissolved in 1943.\textsuperscript{46}

The National Resources Board had set a good example. Other agencies of the federal government soon acted upon some of its conclusions and crossed the traditional barrier of assumed state power by directly involving themselves in city and regional planning and building. Indeed, under pressure from the depression, both state and local governments invited such action. The Public Works Administration [PWA] not only financed construction of schools, sewerage systems, bridges, roads and dams, but also took over the construction of housing for low-income people.\textsuperscript{47} PWA bought sites, drew plans, built the houses and, where necessary, used the politically acceptable power of eminent domain.

The Resettlement Administration initiated America's most far-reaching regional planning project in developing the Tennessee Valley Authority [TVA] to prevent floods, provide soil and irrigation control, furnish cheap power, and develop recreational facilities.\textsuperscript{48} The TVA received the active support of state conservation, health, and highway departments.\textsuperscript{49} Senators who historically had strongly expounded "states rights" defended federally-initiated public works, including housing.\textsuperscript{50} The authority for such projects was assumed to proceed from the general welfare clause of the Constitution.

\textit{Growth of Local Land Use Regulations}

In the years following the dissolution of the National Resources Board, most of the policy affecting national growth developed at the local level

\textsuperscript{44} National Resources Committee, Land Planning Committee, Supplementary Report (various dates 1935-1938). \textit{See also} HAGMAN 20.

\textsuperscript{45} HAGMAN 20-21.

\textsuperscript{46} The National Resources Board was created by Executive Order and, after some interim reorganization and change in name, was abolished by Congress by Act of June 26, 1943 Pub. L. No. 78-90, 57 Stat. 169.

\textsuperscript{47} Franklin and Craig, USA: The Third Century—Guiding the Growth of a Metropolitan Nation (July 31, 1972) (A National Urban Coalition draft memorandum).

\textsuperscript{48} Id.

\textsuperscript{49} Id.

\textsuperscript{50} Id.
and dealt with "land-use" concepts. States were primarily responsible for regulating development, although, in most cases, authority was delegated to local governments. Various tools, generally ineffective, were used at the local level in an attempt to control and guide development.

A major method of persuasion was the exercise of the state's police power in the form of a wide array of land use and development devices designed to protect the welfare of the general public by limiting the free use of private property rights. However, a fatal flaw of the police power is that its application is subject to constant change, often resulting in limited, short-term results and effects.

Zoning was the primary police power used to control growth and development. It classifies and segregates the land according to the permitted uses. Although it worked in well-established communities where there was little land speculation or pressure for new commercial facilities, it had less success preserving open space and channeling growth. While zoning could implement sound development plans, it usually was honored in its breach by the excessive granting of variances or amendments once the pressure of development became too intense.

Zoning was often employed to enforce racial or economic segregation and exclude undesirable industrial and commercial newcomers. In such communities, this method of zoning was defended on the grounds that the development would cost more in municipal spending than it would pay in property taxes. Quite often, then, apartments, public housing, and even one-family homes on small lots were proscribed.

Another tool for regulating growth was found in subdivision controls. They comprise all of the local regulations and ordinances that inform the land owner what he can and cannot do in developing his land. Often, these controls lead to both excessive economic benefits for the developer and unattractive developments with uniform setback and lot size, unimaginative street patterns, and little provision for open space or for commercial

51. See Senate Hearings, supra note 10, at 99.
53. See note 9, supra and Ross, Land Use Control In Metropolitan Areas—The Failure of Zoning and A Proposed Alternative, 45 S. Cal. L. Rev. 335 (1972).
54. Id.
55. Id.
57. Id.
facilities within walking distance of homes.\textsuperscript{58} However, subdivision controls could have been used to encourage cluster development, open space preservation, planned unit development, and other imaginative innovations which can bring a new sense of community and progress to an area. The flexibility of subdivision controls allows potential sophistication in the development of urban and suburban areas.\textsuperscript{59}

Before water and sewer service can be extended to new housing developments, most regulatory bodies require certification that public capacities are adequate to supply the services and that equipment and other facilities on the property meet local specifications.\textsuperscript{60} When combined with adequate control over the use of wells and septic tanks, these permits can dictate the direction and speed of urban growth. Nevertheless, sewer and water lines today are often installed, in a response to already uncoordinated and poorly conceived development.\textsuperscript{61}

Covenants, conditions, easements, and similar restrictions on property use comprise a special set of land use devices which traditionally have been employed by neighborhood and private groups to protect land from commercial, industrial, and undesirable economic or racial groups.\textsuperscript{62} These devices can be tailored to specific goals, are well established in the law, and continue their effect, even if the property is sold.\textsuperscript{63} With a national policy on growth, these private agreements might be given better effect.

Sometimes state governments and the federal government require permits for certain activities on land.\textsuperscript{64} Although the control of individual land use decisions regarding private land is essentially local, and varies widely, these permits may influence major growth patterns and economic development. Federal permits are issued when public lands are involved. Leases, use permits, and licenses are granted to extract oil, gas, coal, and certain other minerals and for grazing, recreation, and timbering.\textsuperscript{65} These permits not only affect the public lands but also may influence the use of nearby privately owned land. The permit power of the Army Corps of Engineers is an important tool in land use decisions affecting navigable waters across the

\begin{thebibliography}{99}
\bibitem{58} Id.
\bibitem{59} \textit{American City} 23.
\bibitem{60} \textit{First CEQ Report} 196.
\bibitem{61} \textit{American City} 231.
\bibitem{63} \textit{See generally} C. Clark, \textit{Covenants and Interests Running With the Land} (1947).
\bibitem{64} \textit{First CEQ Report} 188.
\bibitem{65} Id.
\end{thebibliography}
country. Some states have enacted legislation requiring permits for activities that might cause damage to wetlands or other critical environmental areas.

The local property tax has long been another important influence on growth and development. An important factor in the decline of social services in some cities has been the loss of actual and potential tax revenue when residential, commercial, and industrial development relocate in the suburbs. With strict zoning and subdivision controls, many suburban jurisdictions exclude all but those who will add more to their tax base than they will require in municipal expenditures. Rather than finance activity for the benefit of all people in an integrated urban complex, the property tax has encouraged local isolation from regional land use problems. Although assessment procedures have improved in many municipalities, more reform is necessary for a fair distribution of the tax burden. At present, land and improvements in urban areas tend to be undervalued. Consequently, land owners in urban areas are discouraged from restoring structurally sound buildings or replacing deteriorating ones with new structures, because such improvements will raise the taxes disproportionately. In developing urban fringe areas, low taxes on raw land have encouraged speculative purchase and leap-frog development. Few regions have effectively exploited the interrelationships of zoning, subdivision controls, and other land use devices with property tax policy. The local property tax could be a constructive means to encourage cluster development and open space preservation. Special tax treatment for commonly owned open space and community facilities also encourages protection or enhancement of the land.

The central problem in employing these devices has been public distrust of planning. The public often fails to understand that a comprehensive plan is a living, changing mechanism, and not a static set of maps. Many citizens believe that the planning process has ended when the municipality approves a master plan. A comprehensive zoning policy must accompany any master plan to efficiently effectuate its purposes. The period of time

68. Advisory Commission on Intergovernmental Relations, Metropolitan Fiscal Disparities 227 (1967).
70. American City 241.
72. See note 11, supra at 35.
required to prepare land use plans for large metropolitan areas has caused many citizens to regard planning as an academic exercise. Often this feeling is only strengthened by those planners who ignore the opinions of local residents. However, growing numbers of cities and metropolitan regions have implemented innovative programs as planners begin to take greater cognizance of public attitudes and as planning is better understood by the citizenry.

Planning has also been criticized for its inability to influence important land use decisions. Although planning organizations are frequently pressured to conform their plans to unwise development, this is not necessarily the fault of the planning process. It may be caused, instead, by the inadequacy of institutional arrangements formed to implement the plan. In many localities, the planning function becomes little more than advisory, and the planning officials spend their time applying their own political pressure rather than planning.

Lastly, the planning itself is often inadequate. What should be "comprehensive" plans often deteriorate into a somewhat complementary set of specific functional planning goals for transportation, open space, schools, or some other single goal. In the process, rational perspective is lost and often inadequate, short-term solutions are proffered in place of more complex, long-range, comprehensive ones.

Most of these tools offer some promise of playing an integral part in the construction of a national growth policy. The deficiency in the techniques of local land use regulation has been a lack of commitment to their efficient, long-range, and comprehensive use. Unfortunately, the federal government's performance in this area has not been much better.

Federal Programs in an Era of Transition

Policies: Eisenhower to Johnson

In the early 1950's, there was a resurgence of activity identified with directing the nation's growth. When the Democratic Party captured control of Congress in 1954, Senator Paul Douglas, Chairman of the Joint Economic Committee, advocated the adoption of several growth measures: the establishment of a building program to improve the infrastructure and public services of communities with high unemployment; the creation of a federally supported industrial development corporation to supply inexpensive long-term credit to firms locating or expanding in these areas; the expansion of unemployment insurance coupled with measures for occupational retraining; and federal technical assistance for community planning of remedial measures. A
bill incorporating these ideas was drafted in 1955 by Senator Douglas and others.\textsuperscript{73} To gain additional political support, the bill also extended aid to low-income rural areas.

Despite this maneuver, the prospects for the legislation were dim. During periods of prosperity, there was little interest in the problem; and when unemployment was widespread, there was reluctance to allocate special resources for the poorest areas. Opponents felt these measures would simply sustain marginal economies and marginal firms and draw jobs away from other areas; instead, they preferred retraining measures and subsistence allowances to bring workers to new jobs.

Then, in 1956, largely because of increase in the already high levels of chronic unemployment in the depressed areas, the Council of Economic Advisers retreated from its previous position of opposition to one of measurement, development, and control of growth in specific areas.\textsuperscript{74} Shortly thereafter, the Eisenhower Administration introduced a bill which provided for a revolving loan fund to assist new or expanding firms in depressed areas.\textsuperscript{75} But both this bill and the one introduced by Senator Douglas were killed by the House Rules Committee. The same legislation came before Congress in 1957. Again, the bills were unable to muster support.

With the recession of 1957, however, interest in combating general unemployment was renewed. But, to the dismay of those who favored emphasizing the needs of the depressed areas, an attempt was made to substitute for their legislation a measure providing 2 billion dollars for the construction of community facilities throughout the country. After prolonged efforts and much maneuvering, the supporters of the Douglas bill were finally able to get their proposals through Congress\textsuperscript{76}—only to have the legislation vetoed.\textsuperscript{77}

The veto became a major issue in the 1958 Congressional campaign.\textsuperscript{78} It was even partly responsible for the subsequent Democratic landslide, since there were mainly Democratic victories in the depressed areas. This pro-

\begin{itemize}
\item \textsuperscript{73} The Depressed Areas Act, S. 2663, 84th Cong., 1st Sess. (1955). The bill provided for rapid tax amortization of new plants, including equipment and machinery, for firms in rural areas. It also set up two revolving funds: one for industrial and commercial loans for urban and rural areas, the other for the construction of public facilities. There were additional authorizations for grants to reduce the costs of public facilities and to finance job-training programs.
\item \textsuperscript{74} See generally S. R. Levitan, \textit{Federal Aid to Depressed Areas} (1964) [hereinafter cited as Levitan] and Levin, \textit{The Economic Development Districts—New Planning Regions}, 3 \textit{Urban Affairs Q.} 80-102 (1968).
\item \textsuperscript{75} L. Rodwin, \textit{Nations and Cities: A Comparison of Strategies for Urban Growth} 223 (1970) [hereinafter cited as Rodwin].
\item \textsuperscript{76} Area Redevelopment Act of 1958, S. 3683, 85th Cong., 2d Sess. (1958), was signed on August 25, 1958 by the Vice-President and sent to the President.
\item \textsuperscript{77} Presidential pocket veto, noted 104 \textit{Cong. Rec.} 19,588 (1958).
\item \textsuperscript{78} Rodwin 224.
\end{itemize}
gram was reintroduced at the next session of Congress, but, although trimmed down substantially in the scale of assistance offered, it was blocked, once again, by a Presidential veto.\footnote{Area Redevelopment Act of 1959, S. 722, 86th Cong., 1st Sess. (1959).}

By 1960, the issues had become prominent enough to play a role in the election of John F. Kennedy. The new President had long been a firm supporter of aid to depressed areas.\footnote{Rodwin 224. In 1956, John Kennedy had steered the original Douglas bill through the Senate. In 1955 he had sponsored a version of the Trade Adjustment Act which contained some of the provisions of the second bill Douglas had introduced toward the closing days of the 84th Congress.} Kennedy was familiar with the depressed areas of Massachusetts, and the crucial primary campaign waged throughout West Virginia—one of the poorest states in the country—had profoundly sensitized him to the plight of families trapped in such environments. During the campaign, Kennedy pledged that, if elected, aid for depressed areas would receive first priority. Such legislation was, in fact, the first recommendation he submitted to the new Congress.\footnote{Area Redevelopment Act of 1961, S. 1, 87th Cong., 1st Sess. (1961).} It was quickly passed in 1961 and differed only slightly from the original Douglas bill.\footnote{Pub. L. No. 87-27, 75 Stat. 47 (1961), as amended, 42 U.S.C. §§ 2501-512 (1970).}

The program was assigned to a new agency, the Area Redevelopment Administration (ARA), within the Department of Commerce, with the expectation that both the Administrator of the program and the new Secretary of Commerce could be relied upon for vigorous support.

It had been a long struggle, lasting over five years, but now a bill to help the depressed areas had been enacted. Unfortunately, during that five-year period, the economic conditions at which the bill was directed had deteriorated.

*Early Area Redevelopment Policies*

The ARA was made responsible for determining area designations and grants of loans and subsidies and for administering all redevelopment programs. Since the budget and the legislation kept the size of its staff small, the ARA, whenever practicable, delegated key responsibilities to other agencies.

The new agency was given funds for inexpensive business loans.\footnote{Levitan 123. The loans could cover 65 percent of the investment in land, buildings, and equipment; and interest was based on Treasury borrowing rates plus a small service fee and insurance charge. Applicants had to show that funds could not be secured from conventional sources. They also had to supply 10 percent of the needed capital. This "local participation" requirement was burdensome for it made} These could be used to assist any businesses the ARA chose, provided that there
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was a reasonable assurance of repayment. To avoid charges of "pirating," the legislation limited the loans to firms which were not relocating from other areas and to firms whose expansion would not increase unemployment in the area of original location or in any other area where such entity conducts business operations.84 These provisions restricted the loans largely to new activities or to firms establishing branch plants and to industries which were not operating below capacity because of growth prospects.

The ARA was also given funds for the construction of public facilities. Grants could provide up to 100 percent of the cost, if the ARA was satisfied that the projects could not be implemented without such assistance and that the communities involved were contributing as much as they could to the cost. The legislation required the communities to assess their future prospects, partly because the public facilities and training programs were supposed to be evaluated on the basis of these analyses. These assessments would be used in the preparation of an Overall Economic Development Program (OEDP), describing the main activities and trends of the area and its opportunities and problems.

In 1962, the ARA acquired responsibility for administering the Public Works Acceleration Act.85 This was a short-term, anti-recession measure, effective until June, 1964, providing funds for public works projects. The main aim of this measure was speedy generation of the maximum number of jobs in the greatest number of areas suffering unemployment.

When the legislation was first introduced, about 70 depressed areas were intended to benefit from the program.86 President Kennedy, however, thought the bill should also provide assistance for some 200 communities with stagnating economies. As part of the general effort to generate Congressional support, the criteria for eligibility were further relaxed. Eventually, the final version of the bill contained a clause which requested the ARA "to distribute the projects widely among the several States . . . in order that actual experience with this program may be had in as many States

84. Id. at 124.
85. Pub. L. No. 87-658, 76 Stat. 541 (1962), as amended, 40 U.S.C. § 462, 42 U.S.C. §§ 1492, 2641-643 (1970). Congress coupled this authorization with standby authority for tax reduction in an attempt to provide immediate jobs in communities faced with substantial unemployment. One-third of the funds were for rural and small urban areas. Large areas were eligible if the unemployment rate exceeded 6 percent. Projects had to serve essential public needs and not conflict with local land-use plans. LEVITAN 152-54.
86. See note 73, supra.
and in as many areas and under as many circumstances as possible." Congress wanted to provide assistance for as many of the poorer communities with surplus labor as possible, not just the most needy; and the ARA wanted Congressional support. Therefore, all of the designated areas were made equally eligible. After two years of operation, the number of eligible areas exceeded 1,000 and these areas were distributed throughout the United States.

The result was a scattering of resources over a large number of relatively small projects. Only 40 percent of total loan funds during the early years were invested in areas with excessive unemployment. About two-thirds of the projects and investments made were allocated to smaller urban areas and rural communities with populations of less than 50,000.

Despite the difficulties which were besetting the fledgling program, the ARA's primary aims were consistent with the goals set by President Johnson for his administration. Therefore, rather than eliminating the program, an attempt was made to modify the workings of the ARA through the passage of the Public Works and Economic Development Act of 1965. As an expression of administrative confidence, appropriations for the ARA were more than doubled and its staff increased. In addition, ARA was given a new name—the Economic Development Administration (EDA).

The most significant legislative changes to effect the nation's growth and development were in the definition and organization of the areas which might receive assistance. The new act set up larger districts and regions and reduced the number of designated areas. Equally important was the conscious attempt to devise a general development strategy. The administrators tried to

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87. LEVITAN 109. Eligibility depended on several criteria spelled out in the legislation. However, the administrator was also authorized to designate areas based on other criteria that might appear appropriate. For urban areas, eligibility was based on a sliding scale of excess unemployment above the national average. Rural areas were designated on the basis of income levels and manpower.
88. RODWIN 227.
89. LEVITAN 109.
90. Id.
91. Pub. L. No. 89-136, 79 Stat. 552 (1965), as amended, 42 U.S.C. §§ 3121-132 (1970). The most significant modifications of the machinery concerned loans and grants for public facilities, i.e.: 1) provision of 50 percent direct grants, plus as much as 30 percent more in supplementary grants for projects involving immediate economic benefits, such as water and sewer projects, and access roads for specific sites in industrial areas; 2) to enable EDA to assist projects not otherwise financially feasible, loans for the public works programs were more specifically designed to help the local community raise their matching share of the cost, "not an uncommon situation in areas requiring assistance the most—such as Alaska, the Cumberland Plateau, the Appalachian Highlands and the Mississippi Delta region." Statement of E. P. Foley, Hearings Before the Special Subcomm. on Economic Development Programs of the House Comm. on Public Works, 89th Cong., 2d Sess., 10 [hereinafter cited as Foley].
92. Id.
persuade Congress that economic assistance was most effective "in areas which (were) in relatively better economic health." A strategy based on a comparatively small number of growth centers was considered the key to spurring desired effects throughout an entire region.

The smallest planning unit under the 1965 Act was still the redevelopment area, with each state having at least one such area. To be eligible for assistance, an area had to demonstrate substantial and persistent unemployment and either median family incomes not greater than 40 percent of the national median or a substantial loss of population due to lack of employment opportunities. An area might also qualify for aid if it was experiencing severe economic distress or an abrupt rise in unemployment because of the closing or threatened closing of a major employment source. Finally, areas with substantial unemployment could also receive help even if not otherwise qualified.

The multi-county Economic Development District (EDD) was the intermediate unit in this system. A microregional organization, the EDD was to serve as the basic unit for planning the growth of a depressed area within a state. Like the redevelopment area, it was responsible for preparing an OEDP and it could obtain financial assistance from the EDA for planning, organization, and staff. Each EDD included at least two redevelopment areas and an urban center of less than 250,000 people. The choice of an urban center was critical. It had to have sufficient population, resources, public facilities, industry and commercial services to ensure that its development could become relatively self-sustaining and that its growth would help alleviate distress in the redevelopment areas.

To supplement these units, the 1965 legislation also provided for the establishment of regional planning commissions for redevelopment regions involving several states. The jurisdictions of the commissions were larger than those of the other administrative units, but the jobs were es-

93. Foley 10.
94. The area could be either a county, a labor area as defined by the Department of Labor, a city of over 250,000 population, or an Indian reservation of at least 1,000 persons.
95. Substantial unemployment was defined to be a 6 percent or higher annual average rate during the most recent calendar year and 50 percent above the national average for three of the last four years or 75 percent above for two of the last three years, or 100 percent above for one of the preceding two years. Foley 16. Lack of employment opportunity was interpreted administratively to be a 25 percent or more net population loss and 50 percent or less of the national median family income. Id. at 16.
96. See generally Rodwin 224.
97. In addition to the regional commission for Appalachia which was set up under separate legislation (the Appalachian Regional Development Act of 1965), regional commissions were established for the Ozarks, the Four Corners Area of the Southwest, the Upper Great Lakes, New England, and Alaska.
sentially the same: to evaluate the best investment and implementation
growth strategies for their regions and to utilize effectively the technical
assistance and economic subsidies made available to them through the EDA.\textsuperscript{98}

Although EDA's dominant concern remained the depressed region, it
also began to deal with poverty areas in the big cities. The agency financed
some research on job creation strategies and methods by which federal policy
could help distressed areas. It also urged its regional commissions to press
for more federal spending in their regions and to recommend the most effec-
tive deployment of federal expenditures made available to them. It not only
examined appropriate national policies for regional development, but even
began to discuss building new cities or expanding existing ones.

\textbf{Deficiencies}

The inability of the old ARA to deal effectively with depressed areas on a
county basis had led in a relatively short time to the creation of larger planning
jurisdictions: the multicounty district and the multistate region. The cen-
tral city had also been identified as a lagging region for which the tools of the
1965 Act might be used. In addition, the ARA-EDA had begun to ac-
cumulate evidence designed to persuade Congress that "separate and un-
related projects" did not work and that jobs could not "be brought to every
village and hamlet in the United States."\textsuperscript{99}

One problem facing the agency was the poorly defined relationships be-
tween the planning and the implementation mechanisms. The jurisdiction of
the areas overlapped and the basis for resolving conflicts in development
policies was obscure. The various limitations placed on the different organi-
zations made them better able to discuss problems than to act on them. Even
if imaginative plans were agreed upon, there were no adequate instruments,
either public or private, to carry out development in the proposed growth
areas.

Perhaps the most serious difficulty of all was the inability of the policy-
makers to attack the problems in the most critical areas—the metropolitan

\textsuperscript{98} For example, the central office of EDA has contracted for a series of studies
summarizing the state of the art of regional economic development. It has also con-
tracted for the development of an information data system which will record and pre-
dict public investment expenditures on the county by county basis and it is compiling
information on the many different types of federal programs which have a significant
impact on regional economic development. Foley 23.

\textsuperscript{99} Foley 24.
regions. The EDA was unable to extend aid to more than a few cities because the definition of a redevelopment area was still based on the existence of high unemployment; this definition, unfortunately, excluded most cities, where high unemployment in the business and industrial districts balanced low employment in the ghettos.100

Nor was EDA able to come to grips with the issues raised by the migration of the black population from the South and the growth of ghettos in the central cities of the North. The failure to stress the interdependence of these issues led to the EDA's neglect of what might have been one of its most important responsibilities—the transformation of the economy of the Nation's most critical region, the deep South. Aside from the racial issue, it was the South's lack of prospects for the black worker—in agriculture and in the southern cities—which accounted for the black migration to northern cities.

Unfortunately, the desire to rise to the challenge was frustrated by the inability to do so. Little could be done, as long as the government's financial ability to act was substantially impaired by its growing commitment to the war in Vietnam. Nonetheless, key advisors of the administration, anxious to do something, turned their attention to the conditions of life in the ghettos. Such resources as were available were put into comprehensive programs for improving specific ghetto areas and to provide further incentives for building large subdivisions and new cities in the metropolitan regions. The Demonstration Cities and Metropolitan Development Act of 1966101 and the Housing and Urban Development Act of 1968102 were the principal new tools designed for these ends.

Under the Model Cities program authorized in the 1966 act, a city could experiment with solving the physical, economic, and human problems of the disadvantaged in one of its blighted areas. It could apply all of the tools and funds available under past and current legislation for planning, housing, urban renewal, job training, education, recreation, health, and welfare. The aim of the Model Cities program was to develop a broad, flexible approach utilizing existing agencies and shaped by the citizens directly affected.

100. See E. P. FOLK, THE ACHIEVING GHETTO 112-15 (1958). As stated by the former head of the program, EDS's aim was "to provide opportunities at the major growth centers within a region [in order] to minimize the social cost of migration. From the standpoint of the individual, it is far better to move as far as 200 to 300 miles to a viable city within his region of birth than it is to migrate to a metropolis a thousand miles away." See also RODWIN 233.


To encourage further experimentation, HUD financed studies by independent consultants to propose changes in every aspect of urban problems.\textsuperscript{103}

In 1968, Congress expressly provided for enough federally guaranteed funds to cover major costs until the development could generate income from the sale of lots, homes, and non-residential properties.\textsuperscript{104} Aside from the desire to attract private capital, the legislation had two other aims:

- to assure future outlets to the suburbs for the black population and other minorities and to provide additional ways of accommodating the vast increase of population that the cities would have to accommodate in the future.\textsuperscript{105}

The programs were ambitious but were, nonetheless, overwhelmingly inadequate.

In response to these deficiencies, the Advisory Commission on Intergovernmental Relations [ACIR]\textsuperscript{106} produced a classic work on growth and development policy that was to guide the advocates of such a policy for most of the next decade. The report was entitled, \textit{Urban and Rural America: Policies for Future Growth}.\textsuperscript{107} The Commission examined recent patterns of urbanization and economic development in the United States and the relationships between the two. Both private and public influences on the geographic distribution of economic activity were analyzed. The major consequences of the increasing concentration of population in metropolitan areas and the concomitant loss of population and industries in many non-metropolitan areas were analyzed. Some of the limitations inherent in traditional patterns of urban development were explored. Special attention was directed at the potential of some of the newer types of large-scale development, particularly new communities, in the hope that they could inject a greater degree of order into the future growth of the nation's urban areas.

The Commission recommended the development of a national policy to deal with urban growth,\textsuperscript{108} including a re-examination of multi-state regional

\textsuperscript{103} RODWIN 257.

\textsuperscript{104} See note 102, supra.


\textsuperscript{107} \textit{ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, URBAN AND RURAL AMERICA: POLICIES FOR FUTURE GROWTH} (1968).

\textsuperscript{108} Id. at 72. The report concluded that "[w]hile the commission believes that the immediate needs of our troubled cities and metropolitan areas and poverty-stricken rural areas is pressing, attention must also be given to the longer range objective of encouraging urban growth patterns that will on the other hand conserve our natural resources, while providing maximum social and economic opportunity to all citizens. With the establishment of a national policy for guiding the location and character for
planning areas and agencies, and a new and expanding role for state governments through the development of state urban development plans.\textsuperscript{109}

The Commission also suggested a number of measures that should be considered as possible elements of national, state, and local urban growth policies including locational incentives for government and private facilities, assistance for large-scale urban and new community development, improved land use planning and regulation, and strengthening local government to deal with urban growth. The report stressed the necessity of including the private sector of the national economy in these governmental efforts.

An immediate and significant result of the ACIR report was the Intergovernmental Cooperation Act of 1968,\textsuperscript{110} which sought to coordinate federal programs with state and local government planning. Two titles of the Act are noteworthy. Title IV encouraged the President to establish rules and regulations to coordinate grants from the various federal agencies to the local governments to make them more consistent with regional and local desires.\textsuperscript{111} Title VIII, the Federal Urban Land-Use Act, required federal agencies to coordinate land acquisition, disposal, and change of use in urban areas with local plans.\textsuperscript{112}

\textit{The Nixon Years}

The new administration, searching for ripe ideas to implement, hit upon the formulation of a national urban policy as both a logical next step and as a means of underscoring the failings of the previous incumbents. Even a Republican administration, committed to the rhetoric of decentralization and minimum federal intervention in American life, was able to reconcile its traditional shibboleths with the demands of an urban strategy.

\textit{The Urban Affairs Council and Other Developments}

The first act of the Nixon administration was the establishment of an Urban Affairs Council. Executive Order No. 11,452, issued on January 23, 1969, noted that:

the American national government has responded to urban concerns in a haphazard, fragmented, and often woefully short sighted man-

\textsuperscript{109} Id. at 131.
\textsuperscript{111} 42 U.S.C. § 4231 (1968).
ner (as when the great agricultural migrations from the rural South were allowed to take place with no adjustment or relocation arrangements whatever). What we never had is a policy: coherent, consistent, positive as to what the national government would hope to see happen; what it will encourage, what it will discourage.

Having a policy in urban affairs is no more a guarantor of success than having one in foreign affairs. But it is a precondition of success. With the creation of the Urban Affairs Council we begin to establish that precondition: the formulation and the implementation of a national urban policy.\footnote{113}

The Council, presided over by the President, included the heads of various federal agencies and departments. While it was committed to coordinate programs and to facilitate decentralization and intergovernmental cooperation, the functions of the new council were vague enough to provide ample scope for its efforts. The Executive Order had asserted that:

policies concerning urban affairs shall extend to the relations of urban, suburban and rural areas, to programs affecting them and to the movement of population between them.\footnote{114}

It had further specified that the main function of the Council was to:

assist the President in development of a national urban policy, having regard both to immediate and to long range concerns, and to priorities among them.\footnote{115}

This policy's architect in the early Nixon years was Presidential Counselor Daniel Moynihan, who had written a noteworthy article on the topic in early 1969. The article described the fundamentals of a national urban policy and propounded what became known as a ghetto dispersal policy.\footnote{116} The fundamental tenets of this program were the dispersal of both poor and blacks throughout metropolitan regions and the equalization of social services in urban areas. To accomplish this goal, fragmented governmental authority had to be reorganized and consolidated, fiscal vitality of urban government restored, and specific attention had to be given to migration and settlement policies. Moynihan's approach called for increased participation by state governments, better research on urban problems, and renewed concern for the quality of the urban environment.

Also incorporated into the Moynihan urban growth policy were the writings of Harvard economist John Kain. Two of Kain's articles were widely

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114. Id.
115. Id.
circulated in the White House and the Administration. His "Postwar Changes in Land Use in the American City" contended that the location or spatial distribution of employment is the most important determinant of urban form or structure and that changes in the location of industry are the principal determinants of change in urban form. In "Alternatives to the Guilded Ghetto", Kain criticized many central city spending programs for relying on a false analogy of the ghetto to an underdeveloped country in need of economic development. Kain maintained that nothing less than a complete change in the structure of the metropolis would solve the problem of the ghetto. He advocated drastically expanding the supply of low-income housing outside the ghetto.

A third significant development, during this same period, was that the mounting concern about the growth of the nation's population won new adherents for an urban and national growth strategy. The National Committee on Urban Growth Policy recommended building 100 new cities of about 100,000 persons each and ten major metropolitan areas averaging about 1,000,000 persons in accordance with expected rapid growth in our urban areas. Yet, if this proposal were accepted, it would only accommodate "a mere one-fifth of the expected thirty-year increase."

In late 1969, the first "true" bill advocating the establishment of a national growth policy, the Balanced Urbanization Policy and Planning Act, was introduced by Senator Edmund Muskie on behalf of the Advisory Commission on Intergovernmental Relations. Muskie placed the bill in perspective by stating that:

this bill serves as a follow-up to Title IV of the Intergovernmental Cooperation Act of 1968 . . . which deals with coordinating intergovernmental policy and administration of development assistance programs. More directly, it addresses the problem of urban growth documented in the report of the Advisory Commission on Intergovernmental Relations on "Urban and Rural America: Policies and Future Growth" and in the survey of "The New City" by the National Committee on Urban Growth Policy.

119. RODWIN 224. See also NATIONAL COMMITTEE ON URBAN GROWTH POLICY, THE NEW CITY (1969).
The bill sought to initiate a process at the national level for formulating a coordinated planning policy. It was also designed to establish a complementary program of comprehensive planning assistance and requirements.

Under Title II of the Muskie bill, the President would assume planning, programming, and coordinating responsibilities in the urban growth area. The President would be required to submit annually to Congress an urban growth report. The report would include a summary of the problems and proposals for achieving more orderly and balanced urban development. A Joint Urbanization Committee would also be established in the Congress to serve as a major focal point for legislative analysis of the President's report.

Title III sought to develop an intergovernmental system of planning and coordination that would buttress the development of a national urbanization policy. The title featured two significant innovations.

First, responsibility would primarily be placed upon the states but direct federal-local action would be permitted to localities and areawide jurisdictions if this responsibility was rejected by the state. Second, funds would be allocated on a formula basis rather than on a statewide distributive basis of project-by-project.

Title IV was designed to deal with the lack of both uniformity and clear definition of the numerous planning requirements found in federal grant-in-aid programs, and with the failure, in many instances, to identify the jurisdiction responsible for planning. In an attempt to bring some order out of the confusion in this planning requirement, Title IV would codify the definition of comprehensive planning and standardize the functional planning conformance requirements in five program areas—water, sewer, and other public works facilities; public health services; transportation; open space and recreation; and water resources.

The next step forward on the long road to a coordinated growth policy occurred on July 24, 1969 when the President issued Bureau of the Budget (now Office of Management and Budget) Circular No. A-95. The Circular was aimed at promoting more effective coordination of planning and development activities carried on or assisted by the federal government. The major device was encouragement of systematic communications among federal, state, and local governments carrying out related planning and development activities. The Circular accomplishes this by implementing Title IV of the Intergovernmental Cooperation Act of 1968,\(^{123}\) Section 204 of the

\(^{123}\) See note 109, supra. Title IV, among other things, directs the President to "establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development." The basic objectives of this mandate center about the importance of
Demonstration Cities and Metropolitan Development Act of 1966,\textsuperscript{124} and Section 102(2)(C) of the National Environmental Policy Act of 1969.\textsuperscript{125}

The essence of A-95 is its Project Notification and Review System (PNRS), an "early warning system," to facilitate coordination of state, regional, and local planning assisted under various federal programs.\textsuperscript{126} Coordination is sought through review of applications for federal assistance by state, metropolitan, and regional clearinghouses.\textsuperscript{127} While clearinghouses are expected to have comprehensive planning capabilities or direct access to such capabilities in order to identify the compatibility of proposed projects to statewide or areawide plans, the "clearinghouse" aspect is equally important. For instance, a project which is not inconsistent with existing comprehensive planning may be in conflict with the programs of a particular state or local agency.

Thus, when an applicant sends a notification to the state clearinghouse, the clearinghouse will not only examine it from the standpoint of state comprehensive planning, but will also forward a copy of the notification to any state agencies having programs that might be affected. Notification is also given to specific local governments and agencies with similar programs.\textsuperscript{128}

\textsuperscript{124} See note 100, supra. Section 204 requires that applications for federal assistance to a wide variety of public facilities type projects in metropolitan areas must be accompanied by the comments of an area wide comprehensive planning agency as to the relationship of the proposed project to the planned development of the area.

\textsuperscript{125} 83 Stat. 852 (1970). Section 102(2)(c) requires that federal agencies prepare statements evaluating the impact of any actions they may take that significantly affect the environment. Such statements are submitted to the Council on Environmental Quality. Provision is made for inputs to these environmental impact statements by State and local governments.


\textsuperscript{127} The term, "clearinghouse" is used to fully reflect the functions of these agencies: (a) to identify the relationship of any project to statewide or areawide comprehensive plans; (b) to identify the relationship of any project to the plans or programs of particular state agencies or local governments.

\textsuperscript{128} The Circular also covers HUD housing assistance and mortgage insurance programs for projects of certain minimum sizes:

- in subdivisions, 50 or more lots;
- in multi-family projects, 100 or more dwelling units;
- in mobile home courts, 100 or more units; and
- in college housing, accommodations for 200 or more students.

The review process under the PNRS has been different for these projects. Under HUD housing assistance procedures, a developer submits what is, in effect, a preliminary ap-
Numerous federal assistance programs require, as a condition of the assistance, submission of state plans of action. A-95 provides state Governors with an opportunity to review such plans. Thus permitting the Governor to relate development strategies among the various federally-supported state programs to each other and to any overall strategies developed through the state comprehensive planning process.

A-95 also attempted to offset a growing tendency among federal programs to promote the establishment of regional planning activities that were uncoordinated—both geographically and functionally. In non-metropolitan areas, this had caused a serious drain on already limited planning resources. In metropolitan areas, it had intensified confusion and lead to general duplication of effort. By encouraging the states to develop subplanning areas, A-95 sets the stage for a more complete geographic coverage of the Project Notification and Review System. Applicants for federal assistance for activities planned on a multi-jurisdictional basis must also coordinate their planning with related programs in the area. This, of course, involves an identification of related activities, organizations, and coordinative agreements. Such identification is essential to any systematic planning program.

In 1970, the President issued an Executive Order to require the General Services Administration and executive agencies to be guided by the policies of Title VIII of the Intergovernmental Cooperation Act of 1968 in the acquisition and utilization of land. These agencies and departments are replication to a HUD area or insuring office. The application contains a description of the project, detailed enough for HUD to evaluate it. Evaluation is made, and the developer is notified as to whether the project appears approvable for mortgage insurance commitment or other support. Even if FHA mortgage insurance is not going to be sought, some mortgage lenders will require a favorable FHA report before they will make a construction loan.

The A-95 review process for HUD housing programs has operated with respect to this pre-application phase and consequently covers not only projects which will be insured or supported by HUD but also some whose financing will be conventional. Because of local zoning and subdivision controls or local comprehensive plan requirements, clearinghouse inputs may be minimal with respect to many or most individual projects except those of major size or strategic location. The primary value of notifications to clearinghouses is the intelligence they provide of emerging growth patterns that have to be considered in the areawide comprehensive planning process.

130. Similarly, the PNRS, by requiring clearinghouse review of projected planning and development activities, sets the stage for a systematic and continuous program of coordination.
131. A-95 thus provides, in effect, an operational definition of planning coordination and identifies, but does not prescribe, organizations under which various agencies could be coordinated operationally and policymaking while maintaining their own identities, if that is necessary.
responsible for constructing installations throughout the country for research, national defense, and other purposes. The largest facilities are frequently placed in areas where the impact on surrounding land values and usage can be severe. Under the Executive Order the need for development and re-development of areas and new communities and the impact on social and economic conditions in the area must be considered. Government facilities are consolidated, where possible, and consideration is given to the availability of adequate low and moderate income housing. Facilities must be located in consultation with the State and local governments concerned. Federal agencies must coordinate and consult with each other concerning land needs.

The Environment and National Growth

In the last decade, the rationale for a national growth policy has been based not only on economic development, ghetto dispersal, and better government coordination but also on environmental concerns.

In May 1969, President Nixon established the first organizational entity charged with taking a broad overview of environmental problems—the Cabinet-level Environmental Quality Council, chaired by the President. It was still felt, however, that the Executive Office needed an independent organization concerned exclusively with environmental problems to propose new approaches for dealing with them. The Cabinet-level Environmental Quality Council was abolished by Reorganization Plan No. 2 of 1970, and was replaced by a Domestic Council in the Executive Office of the President. On January 1, 1970, President Nixon signed the National Environmental Policy Act. That act established a national policy on the environment, placed new responsibilities on federal agencies to take environmental factors into account in their decision-making, and created a Council on Environmental Quality in the Executive Office of the President.

The act charges the Council with assisting the President in the preparation of an annual environmental quality report and in making recommendations to him on national policies for improving environmental quality. It gives the Council responsibility for appraising the effect of federal programs and activities on environmental quality.

The National Environmental Policy Act also requires federal agencies to take several significant steps. One is to include—in every recommendation or report on legislation and on other major federal actions significantly af-

133. First CEQ Report 20.
fecting the quality of the environment—a detailed statement concerning the environmental impact of the action, adverse impacts that cannot be avoided, alternatives to the proposed action, the relationship between short-and long-term uses, and any irreversible commitment of resources involved. The detailed statements will include the comments of state and local environmental agencies as well as appropriate federal agencies with environmental expertise. The statements will then be made available to the Council on Environmental Quality, the President, and the public.

On March 7, 1970, the President issued Executive Order 11,514. Together with the two public laws, it empowered the Council to recommend to the President and to federal agencies priorities in environmental programs. The Council must also promote the development of indices and monitoring systems and advise and assist the President and the agencies in achieving international environmental cooperation. Taken together, the legislation and the Executive Order grant a broad charter to the Council. They also provide a mandate for reform in the manner in which federal agencies make environmental decisions—from initial planning to implementation.

The Executive Order further requires that federal agencies continually monitor their own activities to enhance environmental quality. The agencies must issue timely public information and conduct hearings, where appropriate, on federal plans and programs with potential environmental impact.

The environmental statements required of the agencies add a vital step to the decision-making process. Federal agencies must now give full consideration to the environmental implications of their actions. This will permit federal, state, and local agencies to review the implications of federal action before the project is undertaken.

Thus, the federal government has begun to address itself to the environment as an integral aspect of national growth and development.

On July 4, 1970, the Nixon Administration issued its first major report on proposals for national goals and growth. The report was the work of the National Goals Research Staff appointed by the President. The Staff sought to forecast future developments, assess longer-range consequences of present social trends, measure the probable future impact of alternative courses of action, estimate the actual range of social choice, and summarize results of related state and federal research activities. The study concluded

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that "the major lesson to be extracted from the substantive problems reviewed here is the high desirability of an explicit growth policy with a relatively long-term perspective."\textsuperscript{137}

In May 1970, the Administration also pursued its own policy efforts by establishing the White House Domestic Council.\textsuperscript{138} The Council's principle functions are to define policy issues and devise proposals for dealing with them; to assess national needs; to provide the President with prompt advice in times of domestic crisis; to help set national priorities for allocating resources; and to maintain a check on programs and recommend reforms as needed. While its sole statutory mandate is the preparation of an urban growth policy report,\textsuperscript{139} the Domestic Council has been inept in its efforts to guide, report on, and plan for national growth. This unfortunate state of affairs can be largely ascribed to Daniel Moynihan's departure from the Executive Department\textsuperscript{140} and the resulting leadership vacuum.

A Congressional contribution, at least for urban areas, was the Urban Growth and New Community Development Act of 1970,\textsuperscript{141} establishing a broad framework for a "national urban growth policy." The act called for the issuance of a biennial Presidential Report on Urban Growth, while providing new incentives for the development of new communities and inner-city areas. This statute was a partial response to the fragmentary way in which separate, but related, federal policies are now developed and implemented. Congress specified that urban growth policy should:

a. encourage the balanced use of physical and human resources in urban regions;

b. foster economic growth to reverse trends of migration which reinforce disparities among such regions;

c. treat comprehensively the problems of poverty and unemployment associated with disorderly urbanization and rural decline;

d. encourage equal housing opportunities for all;

e. revitalize existing communities and encourage planned, large-scale urban new community development;

f. strengthen the capacity of government institutions to contribute to balanced urban growth;

\textsuperscript{137} Id. at 167.


\textsuperscript{140} Moynihan's departure was due, primarily, to his controversial proposals—particularly his ghetto dispersal program. See text with note 115, supra.

\textsuperscript{141} See note 139, supra.
g. facilitate increased coordination in the administration of federal pro-
grams to encourage desirable patterns of urban growth; and

h. encourage the prudent use of natural resources and the protection of
the physical environment.

The President responded to the Congressional Growth Report requirement
by creating the Domestic Council Committee on National Growth Policy. Dur-
ing the last months of 1970, there was extensive debate and discussion over
the course such a program should take and whether it should include ghetto
dispersal and metropolitan housing plans.142

However, with the departure of Daniel Moynihan, expertise and leadership
were missing, and the essential elements—ghetto dispersal and metropoli-
tan housing plans—were dropped as “politically dangerous.” The result-
ing policy was a patchwork of growth-related legislative proposals.143 This
patchwork policy was presented in a memorandum to the President from the
Committee in late 1970.144 The memo discussed alternatives and new areas
of discussion related to growth policy. It debated a regional development ap-
proach as manifested in the Appalachain Regional Development Commission
with a “growth centers strategy,” selecting about 100 smaller areas with po-
tential for growth or a need for development. Also advocated were location
incentives for private industry to guide growth, a national development
bank, a preferential procurement policy for “proper development,” a federal
facilities location policy, grants to universities in underdeveloped areas,
and public land disposal for new town development.

By early 1971, Senator Abraham Ribicoff of Connecticut was appalled at
the Administration’s “benign neglect” and failure to develop a growth policy
keyed to ghetto dispersal, the linking of jobs in the suburbs to the unemployed
in the city centers, and metropolitan housing opportunities. Ribicoff’s re-
sponse was the Government Facilities Relocation Act of 1971,145 which would
require that adequate housing be available for low and middle income em-
ployees, both black and white, before a federal or state facility, or a federal
contractor, could locate or expand in the community. At the same time, he

142. Bonafede, Ehrlichman Acts as Policy Broker in Nixon’s Formalized Domestic

143. Some of the legislative proposals were: S. 2701, 91st Cong., 1st Sess., (Com-
mmission on Population Growth and the American Future; S. 1430, 92 Cong., 2d Sess.,
Dept. of Community Development); S. 992, 92d Cong., 2d Sess., (National Land Use
Policy); S. 3248, 92d Cong., 2d Sess., (Community Development Block Grants); and
H.R. 7211, 92d Cong., 2d Sess., (Public Land and National Land Use Policy, as it
relates to public land disposal and new town development).

144. Domestic Council Committee on National Growth Policy, Draft Memorandum
For the President (November 20, 1970).

introduced the Urban Education Improvement Act of 1971 as an incentive to suburban school districts, which felt that the provision of low and moderate income housing in their areas would cause increased taxes for the maintainance of existing levels of governmental services—particularly in the area of education.

The remainder of 1971 saw little implementation, but debate increased over the manner in which the nation should fulfill its national purpose, while controlling its growth.  

Recent History

An increasing but disjointed concern for developing a national growth policy has arisen during the last year. In February 1972, the President transmitted the first biennial report on national growth. The report was the first of a series required by law, marking a significant milestone in the everexpanding role of the federal government in this area. Nevertheless, it was met with unfavorable reviews. The most common criticism was that the report failed to face up to the dire need for an evaluation of priorities establishing broad national goals. Instead, the report questioned the very advisability of a comprehensive national urban growth policy and presented recommendations which were no more than a listing of President Nixon's legislative proposals for the previous year. This, of course, does not constitute a coordinated national growth policy.

Although it provided descriptive data on the distribution of blacks in metropolitan areas and their concentration in central cities, the report was eloquently silent about the nation's failure to provide equality of freedom for

146. Id.
147. The House Committee on Banking and Currency assembled testimony on the manners in which housing production and demand and a "suitable living environment" are related to national development and growth. Papers submitted to Subcommittee on Housing Panels of the House Comm. on Banking and Currency on Housing Production, Housing Demand, and Developing a Suitable Living Environment, pts. 1 and 2, 92d Cong., 1st Sess. (1971). The committee also considered housing legislation that year, but no major housing bill with provisions concerning a possible national growth policy passed. However, many bills were introduced in the 1st session of the 92d Congress. See S.J. Res. 52 (Comprehensive Planning and Open Space Land Grants); S. 580 (National Development Financing); S. 1958 (Domestic Development Bank); H.R. 3550 (National Development Act); H.R. 9688 (Housing and Urban Development Act). For a complete list, see Staff of Senate Comm. on Interior and Insular Affairs, National Land Use Policy: Background papers on past and pending legislation and the Roles of the Executive Branch, Congress, and the States in Land Use Policy and Planning, 92d Cong., 2d Sess. (Comm. Print 1972).
blacks and other minorities. For obvious political reasons, it failed to mention this administration's non-leadership with respect to integrated suburban housing.

Another deficiency of the report was the manner in which it glossed over any substantive consideration of the gross inequities of income distribution and poverty. Certainly any concerted effort to coordinate growth policies must be addressed to these essential issues.

In respect to the nation's housing, it is significant to note that, although a number of references were made to housing, nowhere did the report treat the problems related to the supply and quality of housing and to major housing policy considerations in the private and public sector. This omission is even more disconcerting in light of the fact that the report was required by Title VII of the Housing and Urban Development Act of 1970. It may be inferred from this "benign neglect" that the Administration's housing stance will remain one of promising much and delivering little.

In general, the study may be characterized as recognizing some problematic aspects of national growth, but avoiding the major problems confronting the nation. Moreover, its initiatives are, without exception, too little, too late, and too subordinated to the shackles of its 18th and 19th century value system. Its proposals are consistent with the Administration's racist "Southern strategy," frontier psychology, big business orientation, and strict constitutional constructionism.

In early March 1972, the need for control of national, and even worldwide, growth was documented by the publication of The Limits To Growth.150

150. D. H. MEADOWS, THE LIMITS TO GROWTH (1972). The Club of Rome, an internationally distinguished group of businessmen, economists, and scientists which sponsored the report, concluded with a number of postulates regarding the future of man's development. They were very pessimistic:

1. "We are convinced that realization of the quantitative restraint of the world environment and of the tragic consequences of an overshoot is essential to the initiation of new forms of thinking that will lead to a fundamental revision of human behavior and by implication of the entire fabric of present-day society;

2. "We are further convinced that demographic pressure in the world has already attained such a high level, and is moreover so unequally distributed that this alone must compel mankind to seek a state of equilibrium on our planet;

3. "We recognize that world equilibrium can become a reality only if the lot of the so-called developing countries is substantially improved both in absolute terms and relative to the economically developed Nations, and we affirm that this improvement can be achieved only through a global strategy;

4. "We affirm that the global issue of development is, however, so closely interlinked with other global issues that an overall strategy must be evolved to attack all major problems, including in particular those of man's relationship with his environment.

5. "We recognize that the complex world problematique is to a great extent composed of elements that cannot be expressed in measurable terms. Nevertheless, we believe that the predominantly quantitative approach used in this report is an indispensable tool for understanding the operation of the problematique. And we hope that
The book, prepared by the Massachusetts Institute of Technology, is a computerized forecast of doom. Basing its findings on a computerized prediction, the model investigates the growth of five major world factors—population, pollution, resources, food supply, and industrial output—and concludes by forecasting a disastrous, overpopulated, undernourished, overindustrialized, and depleted society by the year 2100.

The report—perhaps overly pessimistic, perhaps overly optimistic—has awakened us to the fact that, even if we develop our own national growth policy, it may be too late. Even if we develop our own national growth policy, international pressures from uncontrolled growth may wreck havoc with our future national well-being.

In July 1969, President Nixon called for the creation of a national Commission on Population Growth and the American Future to study the potential effect of population growth. The Congress responded by enacting legislation establishing the Commission. After two years of concentrated effort, the Commission concluded that,

... in the long run, no substantial benefits will result from further growth of the Nation's population, rather that the gradual stabilization of our population through voluntary means would contribute significantly to the Nation's ability to solve its problems. We have looked for, and have not found, any convincing economic argument for continued growth.

Thus, the Commission endorsed and documented specifics for a foundation of a national growth policy.
While the report could have served as a major force in the development of a population segment of a national growth policy, it was lightly treated and, in large part, refuted by the President. By early 1972, thus, President Nixon had failed to propose any new initiatives toward the development of a national growth policy and had, in fact, de-emphasized the concept. In late May of this year, however, a dramatic turnabout seemed to occur. Presidential aide John Ehrlichman, in a memorandum to all Cabinet officers, asked for their contributions and responses to a long series of questions that might help the White House develop such a policy.\textsuperscript{155} Apparently, Ehrlichman was considering new legislation for the 93d Congress, priorities for the fiscal 1974 budget, and the preparation of the 1974 growth report required by the 1970 Housing and Urban Development Act.

Another development that indicates a greater public awareness was manifested in the Third Annual Report of the President's Council on Environmental Quality.\textsuperscript{156} The study included a section on environmental forecasting. Citing the groundbreaking work of the Club of Rome\textsuperscript{157} and Report of the Commission on Population Growth and the American Future,\textsuperscript{158} the study noted the dangerous possibility that all the endeavors to date to preserve the environment may be inadequate to abate catastrophic consequences.

In recent months, social critics have advocated means by which the public's attention would be focused on the long-run consequences of the nation's comprehensive planning to achieve a higher quality of urban development; 4) action to increase freedom of choice of residential location through elimination of current patterns of racial and economic segregation; 5) to anticipate and guide future urban growth, the Commissioner recommended comprehensive land use and public facility planning on an overall metropolitan and regional scale; 6) that governments exercise greater control over land-use planning and development; 7) to reduce restrictions on the entry of low and moderate income to the suburbs the Commission recommended that Federal and State governments ensure provision of more suburban housing for low and moderate income families; 8) to promote the expansion of job opportunities in urban places located within or near declining areas and having demonstrated potential for future growth, the Commission recommended the development of a growth center strategy; 9) The Commission recommended the establishment of State or regional development corporations which would have the responsibility and the necessary powers to implement comprehensive development plans either as a developer itself or as a catalyst for private development; 10) the Commission recommended the creation of an office of population growth and distribution within the executive office of the President; and 11) that State governments either through existing planning agencies or through new agencies devoted to this purpose give greater attention to the problems of population growth and distribution.

\textsuperscript{155} See Wall Street Journal, July 21, 1972, at 1, col. 3.
\textsuperscript{156} COUNCIL ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL QUALITY: THE THIRD ANNUAL REPORT (1972).
\textsuperscript{157} See note 149, supra.
\textsuperscript{158} See POPULATION.
failure to develop priorities and to plan for future growth. Dr. Philip Hau-
ser, a noted commentator, stated:

The creation of a Council of Social Advisors (in the Executive Of-


fice of the President) and a Presidential Social Report would be


the most effective way to focus public attention on the needs in the


social areas and to obtain the commitment of the American people
to social goals. 159

In September, the Senate responded with the passage of the Full Opportu-
nities and National Goals and Priorities Act of 1972. 160 This act will, for
the first time, formulate national goals and objectives for a national growth policy. The act creates a Council of Social Advisors, much like the Council of Eco-


nomic Advisors, endowed with the duty of creating a “national priorities re-


port.” 161

Another legislative effort contributing to the piecemeal creation of a na-
tional policy was the Rural Development Act of 1972. 162 When coupled
with the Agricultural Act of 1970, 163 this act planted the seeds of a national
growth policy for our rural areas. The new act confers the major responsi-
bility to coordinate rural development upon the Department of Agriculture
and provides several new authorities that will help improve rural economic
opportunities and community life. The result should reduce the isolation of
rural America, bolster agriculture, and relieve urban congestion by reducing
rural migration to cities and by encouraging a more balanced national growth.

One proposal advocated as a key to successful management of the na-
tion’s growth has been the orderly management of the public and private
lands. Over the last two and a half years, Congress has addressed itself to the
task of breaking new ground in developing legislation to plan and manage
land use on more than a local scale. Senator Henry Jackson was the first
to propose a “national land use policy” bill. 164 The bill was again offered
in this Congress. The Senate Committee on Interior and Insular Affairs,
chaired by Senator Jackson, sought to fashion legislation to improve land
use planning and management capabilities of federal, state, and local govern-


161. See note 159, supra. The report would include: 1. An analysis in terms of
national priorities of the programs in the annual budget submitted by the President,
2. an examination of the resources available to the nation, the foreseeable costs and
the expected benefits of existing and proposed federal programs, and the resource and
cost implications of alternative sets of national priorities, and 3. recommendations con-
cerning spending priorities among federal programs and courses of action as to which
program choices would best guide America’s growth.
ment. The Committee reported an amended bill late in the second session. S. 632, as reported, provided federal technical assistance and a grant-in-aid program to the individual states to assist them in developing and improving their capacity for planning and management. The act also provided important new authority designed to improve state and federal coordination. The administration of the act is given to the Secretary of Interior through a newly created Office of Land Use Policy Administration. He would be assisted in the review of state land use programs by the heads of other federal agencies which have programs with significant land use impacts and by the Secretary of Housing and Urban Development. A National Advisory Board on Land Use Policy, composed of high-level representatives of those agencies, would serve as a regular source of advice to the Secretary of the Interior and as a means of communication and coordination among the various agencies concerning federal interests in land use policy.

A major purpose of the act is to assist states in developing a state planning process. The state planning process, required within three fiscal years of enactment, consists of adequate funding, competent staff personnel, a data and information base, and an appropriate planning agency at the state level. After the state has developed a state planning process and capability, it must develop, within five years, land use programs which concentrate on four categories of "critical areas and use of more than local concern." These areas and uses are considered to be of statewide interest because decisions concerning them have impacts on citizens, the environment, and the economy totally out of proportion to the jurisdiction and the interests of the local decisionmakers, the local zoning body, or land use regulatory entity. Absent any form of state regulatory control or oversight, there may be no means of mitigating the adverse effects upon the regional, state, or national populace, economy, or environment which may result from decisions made upon purely local consideration. These four categories of areas and uses of more than local concern are: (1) areas of critical environmental concern (beaches, flood plains, wetlands, historic areas); (2) key facilities (major airports, highway interchanges, recreational lands and facilities, and facilities for the development, generation and transmission of energy); (3) development and land use of regional benefit; and (4) large-scale development (major subdivisions, new towns, or industrial parks).

The federal review of state progress in developing a "planning process" and a "land use program" does not, for the most part, invite scrutiny of the substance of that process or program. The primary focus of the review

166. Id.
is whether the state has authority to develop its planning process and develop and implement its land use program and whether it is making good faith efforts to do so. This is in keeping with the act’s purpose to encourage better land use decision-making at the state and local levels, without providing substantial new land use decision-making authority on the federal level.

To encourage state governments to assume responsibility for the major land use activities occurring within its boundaries, the act creates two sanctions. First, grant-in-aid money authorized by the act may be withheld upon non-compliance. The second sanction is a phased withholding of funds under three other federal programs (airport development funds, primary and secondary federal-aid highway funds, and Land and Water Conservation Fund monies). This sanction may be invoked only after five fiscal years, and, when the state land use program again meets the requirements of the act, any funds withheld must be disbursed to the states. The three programs for which funds would be withheld are deemed to have the most significant long-range and irreversible impacts upon land use patterns because of the exceptional influence they have on public and private development.

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

In the view of the Senate Committee on Interior and Insular Affairs, the Land Use Policy and Planning Act of 1972 was the best means to assist local, state, and federal governments in moving from an era of ad-hoc, case-by-case, crisis-to-crisis, land-use decision making to an era of long range planning and management. But the act is patently inadequate. It does not mandate comprehensive regional or statewide planning. The Interior Committee maintained that “most states now lack and probably could not develop in less than five to ten years the capacity to undertake and implement a comprehensive planning effort for their land resource base.” The Committee’s con-

167. Id. at 22.
169. Id. at 20.
clusion was: "Accordingly, S. 632 separates out the most critical and far-reaching of land use activities—those which provide the framework, the structure, and the major influences in shaping local, regional, and state land use patterns—and provides assistance to the states to focus available resources and planning expertise on such activities."\(^{170}\)

The result, in essence, was a "cop-out." In the past, similar zoning and planning of our lands has proven inadequate on the local level. Why should it now succeed on the national level? Indeed, Senator Gordon Allot, ranking minority member on the Committee, has depicted the bill as a large dole to the states with little responsibility exercised in return.

\[\ldots\] it is not the intent of the Committee that this proposal have the effect of transferring a significant measure of authority over what have traditionally been local and State decisions on certain land use matters to the Federal government.\(^{171}\)

Yet, the bill, as reported, was still an evolutionary departure from the traditional practice of private and local control over the use of land. Passage of the legislation came only after the Senate had substantially weakened the reported bill by removing some of the proposed economic sanctions against the states (that would have withheld part of the federal highway, airport, and water conservation funds from states that failed to comply with the new land use program) and by reducing the financial scope of the program.

Senate passage of the bill came, but only after two days of haggling between Senator Jackson and Senator Edmund Muskie—who failed in his attempt to amend the bill by placing its administration under the White House Domestic Council. Senator Muskie was also perturbed that there were no limits, guidelines, or goals that defined a national land use policy. He argued that the bill had "no substance" and warned that it could result in "confusion, lack of guidance, and lack of leadership."\(^{172}\) Legislation formulating a national land use policy for our public lands was even less successful in the Congress.\(^{173}\)

The area of greatest potential accomplishment in the development of a

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\(^{170}\) Id.

\(^{171}\) Id.

\(^{172}\) New York Times, Sept. 20, 1972, at 1, col. 5.

national growth policy is in the field of housing. However, since the passage of the Housing and Urban Development Act of 1970,174 no major housing legislation affecting national growth has emerged. Some critics believe that the failure to produce substantial changes in the federal law in the housing and urban development field after two years of struggle is linked to several factors: (1) unusually close ties between the commercial interests which want to see programs essentially unchanged, and members of Congress responsible for drafting legislation; (2) failure of the Nixon Administration to promote and work for new housing and civil rights policies; and (3) the common background of many housing experts in Congress, in the Department of Housing and Urban Development, and in the housing industry.175

The struggle for a major housing bill came to a head in late September of this year. While, on March 2nd of this year, the Senate passed its version of the Housing and Urban Development Act of 1972,176 the House Banking and Currency Committee did not report out its bill until too late in the Session for adequate consideration. Both measures provided for minor changes in the field, including block grants for certain community development programs and consolidation of most of the Department of Housing and Urban Development’s planning programs.

Both bills were notable for their exclusion of initiatives suggested in other legislation that would have mandated a better quality of national development and growth. One proposal would have created metropolitan and state housing agencies to program, but not develop subsidized housing.177 Another proposal excluded from the bill was the creation of state metropolitan development corporations to develop the nation’s decaying rural and depressed urban areas.178 A third proposal would have aided in financing such development by creating an Urban Development Bank.179 This provision would have broadened the source of funds and would have decreased the costs of capital funds for state and local government by providing long term development loans and technical assistance to help them meet the need for essential public works and community facilities including the acquisition of land.

Current Proposals

Current comprehensive proposals for a national growth policy are few. But

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174. See note 141, supra.
175. See note 172, supra.
even so, there is a broad diversity of opinion over the methods of controlling the Nation’s growth.

One approach is embodied by the American Law Institute’s Model Land Law Development Code.\textsuperscript{180} The project is an attempt to provide states with model legislation that would supplant existing zoning programs and subdivision controls by proposing a new framework for the organization of land development regulations. This framework would consist of a state land planning agency coupled with local land development agencies. This proposal would, however, only develop slight similarities among fifty state variations of a national growth policy.

A recent legislative proposal\textsuperscript{181} by Senator Joseph Montoya of New Mexico seeks to promote a national policy by providing a “physical infrastructure” for growth through a national public works investment program. That program would also be keyed to regional development commissions and districts throughout the country. The Montoya proposal would establish a productive precedent by formulating guidelines for federal public works projects. This would be a first step in making the federal government the nation’s principal developer.

Proposals for a national growth strategy have come from a multiplicity of sources. In January 1972, the American Institute of Architects (AIA) released a national policy statement called, “America At the Growing Edge: A Strategy for Building A Better America.”\textsuperscript{182} It urged that governments provide one million acres of land at an estimated cost of $5 billion for community development in both urban-core areas and the metropolitan periphery. The land would remain permanently under public ownership with development under the control of federal, state, and local governments. Certain portions of the land would be reserved for recreation, open space, and housing. Leasing, rather than outright sales, to private developers would occur after development plans had been made.

The proposed development of the land would set the pace and standards for a national growth policy through a special impact program involving 60 urban regions and accommodating a third of the nation’s anticipated growth in the next 50 years. With the assumption that this growth will occur in


\textsuperscript{182} American Institute of Architects, America At the Growing Edge: A Strategy for Building A Better America (1972).
urban areas, the statement urges that priority be given to rebuilding the inner city on a large scale. The building block of the enormous renewal plan proposed by the AIA is a "growth unit"—defined as a neighborhood ranging from 500 to 3000 housing units. The growth unit would also be large enough to encourage new technology in municipal services, while providing for the personalization of life found in small communities.

Although the start of a new growth unit program would begin, on vacant land, to provide relocation for those within an older neighborhood in need of rebuilding, the statement also calls for state control of building and zoning incentives for development in certain remote geographical areas, revenue sharing, and a public works investment program.

Herbert Franklin, one of the nation's leading urbanologists, has advocated, on behalf of the National Urban Coalition, a National Metropolitan Development policy. The general policy goals would be: (1) to provide land for the development and redevelopment of metropolitan America at the appropriate scale, price, and location for equitable and efficient growth; (2) to provide services at high standards for the development process; (3) to conserve recreational land within, and at the fringe of, metropolitan growth areas; and (4) to articulate the physical standard at which metropolitan land should be developed and serviced. To spearhead acquisition of land and its development in line with the policy goals, Franklin argues for the creation of a new instrumentality of national government with counterparts on the metropolitan level—a National Metropolitan Development Corporation (NMDC) and local Metropolitan Development Corporations (MDC's)—as its implementing bodies.

The most extensive and lucid legislative proposal pertaining to national growth policy in the Congress is a draft of a "Balanced National Growth and Development Act of 1972," to be introduced by Senator Hubert Humphrey.

The bill is committed to an urban-rural balance in contrast to past initiatives which have concerned themselves primarily with the rapid growth of our metropolitan areas. But it also goes beyond a logical extension of past rural development legislation. The act would establish specific national goals for a national growth policy including levels of wealth, environmental quality, population, land use, transportation facilities, communications, and energy consumption for geographical regions of the nation. The act would also create an Office of Balanced National Growth and Development consisting

183. Supra, note 47.
of relevant members of the Cabinet and independent federal agencies. The Office would serve as the point of coordination and direction of all federal and federally assisted programs for growth planning and development.

The Office would also prepare an annual report on Balanced National Growth and Development mandated by the act to incorporate the reports required under Title VII of the Housing and Urban Development Act of 1970, Title I of the Airport and Airway Development Act of 1970, and Title IX of the Agricultural Act of 1970.

A novel section of the act would have this new Office replace the ineffective Domestic Council, which has been stagnant since the departure of Daniel Moynihan from the White House.

The new version of the Domestic Council would be strengthened substantially by consolidating in one office all functions of the Office of Management and Budget under provisions of Title IV of the Intergovernmental Cooperation Act of 1968, Section 204 of the Demonstration Cities and Metropolitan Development Act, Section 102(2) of the National Environmental Policy Act of 1968, along with the new functions embodied in this act.

The new Office in the White House would also become the nation's planning board. The bill proposes to consolidate many existing federal planning and planning assistance programs including a complete comprehensive planning and planning assistance package. With this new responsibility, the Office would establish new federal uniform planning requirements for states and regional bodies to qualify for grants for planning.

One seemingly complex, and perhaps duplicative, aspect of the Humphrey draft bill is the creation of an Intergovernmental Council on National Growth and the American Future. This section of the bill would replace the old, but most efficient group—the Advisory Commission on Intergovernmental Relations—with a newly-created, but somewhat more comprehensive entity in the hope that it can truly compel intergovernmental cooperation.

Further, the Humphrey bill would authorize the creation of a Joint Congressional Committee on Balanced National Growth and Development, a Congressional Office of Policy and Planning, a Foundation on National Growth and the American Future to spur, rather than compel, private participation, and an agency for population and demographic analysis within the Bureau of the Census.

The only legislation introduced in the 92d Congress specifically man-

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185. See note 141, supra.
187. See note 163, supra.
188. See notes 110, 101, and 134, supra.
dating the development of a national growth policy is the Hartke National Growth Policy Planning Act of 1972.\textsuperscript{189}

This act calls for the formulation of a national growth policy to effectuate economic development, population control, housing distribution, the use of natural resources, the protection of the environment, and the location of government and corporate facilities in a manner and magnitude that will increase this nation's potential for survival. The act establishes a national growth policy planning board to coordinate the efforts of federal, regional, state, and local governments in controlling and managing growth. An effective research, planning, and coordinating agency on the national level is envisioned for the formulation of goals and guidelines for the nation's growth in the next century. The act also creates a program of federal financial and technical assistance to state and interstate agencies in developing statewide and regional growth policy planning as elements of a national policy.

In light of the increasing public frustration and concern about the lack of a concerted national policy, it was felt that an effort should be made to renew the debate over the country's future growth. The National Growth Policy Planning Act was introduced to do just that.

The act, while unique in its creation, was deliberately simple in design. It was my belief that there must be some institution high enough in government, and yet somewhat removed from the typical bureaucracy, to continue planning and implementing a future vision for the nation, and that the public must be adequately informed of the mechanism to assuage possible fears of excessive government control often associated with proposals of federal "social planning."

I sought to accomplish this by emphasizing grants to state and regional authorities for growth policy planning and providing for extensive public participation in national planning. Indeed the success of a national growth policy will be dependent on the "soft" aspect of it—whether it is accepted by the people and the degree of their participation—rather than the "hard" aspect of guidelines, goals, and institutions.

The response to the bill was overwhelming,\textsuperscript{190} but it was soon realized that the bill was too simplistic to cover such a complex and interrelated problem as the nation's growth. I will offer a comprehensive proposal in the

\textsuperscript{189} S. 3600, 92d Cong., 2d Sess. (1972).

\textsuperscript{190} Letters from mayors, governors, professors, housing and planning officials are on file in my Senate office.
93d Congress. Others in the Congress have also started to respond. Hopefully, together we can formulate a national growth policy.

Proposed National Growth Policy

The failing of Congressional legislative endeavors to date has been their narrow scope. Planning for the growth of the country encompasses a solution to the myriad of complex and interrelated problems that must be addressed by a comprehensive national growth policy.

Any truly constructive legislative effort must call for the development of a national growth policy at the highest level of government. Such a policy must be implemented by the Executive Office of the President and must replace the presently inefficient Domestic Council. A new Council on National Growth and Development would combine the responsibilities of the Council on Environmental Quality, the old Domestic Council, the Advisory Commission on Intergovernmental Relations, the Office of Management and Budget, the Department of Housing and Urban Development’s comprehensive planning assistance program, the now-defunct Advisory Commission on Population Growth and the American Future, and the old National Goals Research Staff.

The Council would have the following functions: (1) setting national goals for growth and development including specific population policy goals; (2) coordinating federal programs; (3) reviewing regional, metropolitan, and state growth policy initiatives for compliance with federal guidelines; (4) developing depressed areas of the country; (5) administering incentives to and sanctions on, local units of government to plan and manage growth; and (6) preparing an annual report on national growth and development.

Such "constructive" legislation should also provide grants-in-aid for the creation of federal but decentralized regional planning and development commissions much like the Appalachian Regional Development Commission.

While it is extremely difficult to limit or stop growth in certain areas, a more critical problem is the development of desolate areas and the redevelopment of areas that have been the product of national neglect.


A proposed national growth policy and development act would provide for the creation of a National Development Corporation (NDC). The NDC would have two main functions: (1) to coordinate the activities of metropolitan, regional, and state development corporations; and (2) to act as the developer of last resort where federal incentives and sanctions fail to spur action to provide the necessary facilities and conditions for the public health, safety, and welfare. Certain areas might be declared "national disaster development areas."

Another component of this congressionally shaped growth policy would concentrate on consolidating and simplifying a number of complex and overlapping programs of federal assistance to communities and neighborhoods.

A special emphasis should be placed on federal incentives for the creation of state and metropolitan housing agencies. This would provide not only a sufficient supply of housing for people of all incomes and lifestyles but also would facilitate racial integration of suburban and rural areas by the dispersal of housing opportunities.

To broaden the sources and decrease the cost of capital funds for state and local governments, I believe that an essential element of a "cost possible" national growth policy would be the creation of a national development bank with regional and urban branches. The development bank be modeled after central banks throughout the world and similar to the World Bank. It would, however, be dissimilar from current banking practices in that its primary emphasis would be uplifting depressed areas rather than making profit.

As an integral component of a national growth policy, a metropolitan land bank should be created as an arm of the development bank and development corporations. The urban land bank would provide metropolitan authorities with federal assistance in acquiring, managing, and disposing of land according to the preconceived metropolitan plan. The key benefits derived from this affirmative role would be the advance acquisition of land for public purposes, avoidance of the expenses of urban sprawl, and improved management and control of the land market. By providing an infrastructure for orderly urban development, the increased value of land caused by government activities could be recaptured and applied to the costs of the program.

Another area of tremendous potential concerns the location of federal and corporate facilities. Prior to the location of any federal facility or the initiation of an activity affecting national development, federal departments and agencies should be required to file a report with the Council on National Growth and Development. The report would be similar to the environmental impact statements required by the National Environmental Policy Act. The report would establish the proposed activity's consistency with a balanced national growth policy—its environmental and economic impacts and its general effect on regional development and the costs involved. Private corporations would also be required to comply with these standards.

Finally, federal procurement policies should be integrated into a scheme of national growth management. Regulations could be issued by the Council on National Growth and Development to assure that, in any federal procurement above certain prescribed amounts, consideration would be given to balanced national growth and development policies. And the regulations would also provide for the use of alternative sources of procurement if costs are not excessive. In this manner, the purposes of the act would be promoted and the criteria for determining such considerations would be established.

**Conclusion**

In *The Limits of Growth*, an interesting riddle is offered to illustrate the danger of inaction in developing a realistic growth policy:

Suppose you own a pond on which a water lily is growing. The lily plant doubles in size each day. If the lily is allowed to grow unchecked, it would completely cover the pond in 30 days, choking off the other forms of life in the water. For a long time the lily plant seems small, so you decide not to worry about cutting it back until it covers half the pond. On what day will that be? On the twenty-ninth day, of course. You have one day to save your pond.\(^{195}\)

Planning, coordination, and foresight are urgent and mandatory if we wish to check the exponential growth of a society almost out of control.

The sole hope of the future lies in a complete national commitment, from the highest level to the lowest. As we have seen, the early, "benevolent" history of land use policy failed miserably. Likewise, local sanctions were grossly inadequate. The efforts of three national leaders—Presidents Eisenhower, Kennedy, and Johnson—only confused the issue and provided short-term remedies for a long-term problem. The promises embodied by

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the Nixon Administration have proven false. Confusing structures and a myriad of committees have been created to combat a dilemma that should have received the highest possible federal priority. But a federal effort by itself is simply not enough. So too, action on the state and local level, by itself, cannot abate the crisis. National action, and only national action, will prove successful in devising and implementing a viable growth and development policy. Otherwise, we may have only one day to save ourselves and our country.