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Proceedings of the Land Use Subcommittee

of

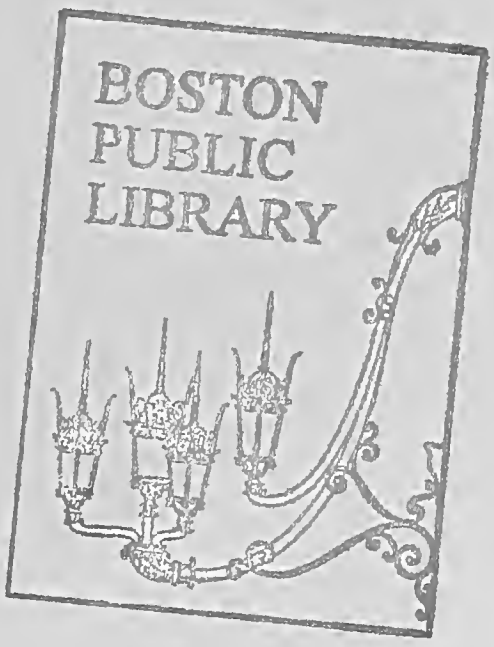
THE SPECIAL COMMISSION ON THE EFFECTS OF GROWTH

PATTERNS ON THE QUALITY OF LIFE IN MASSACHUSETTS

Volume II

(Spring 1975)

11 July 1975



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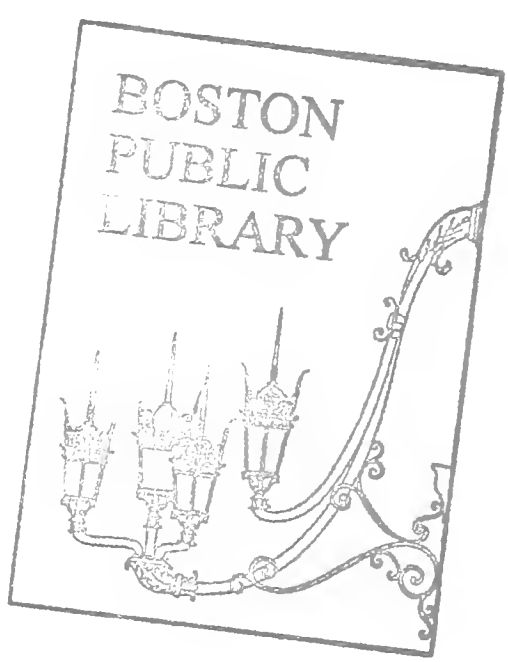

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PREFACE

This report summarizes the second half of the proceedings of the Land Use Subcommittee of the Special Commission on the Effects of Growth Patterns on the Quality of Life in the Commonwealth. Volume I (February 1, 1975) recorded the Subcommittee's 1974 proceedings.

The first half of the Subcommittee's work focused on developing a consensus concerning the nature and causes of land use guidance and growth management problems in Massachusetts. In 1975, the Subcommittee shifted its attention to potential solutions to these problems, focusing the majority of its work on legislative analysis and drafting. The result of this effort was the preparation of a working draft of a bill relating to "Local and Regional Participation in the Formulation of a Growth Management and Land Use Policy for the Commonwealth." Different drafts of this bill were discussed in detail and revised at both the March 27th and April 24th Subcommittee meetings.

On April 29th, a steering committee of the Wetmore Commission, consisting of Rep. Wetmore, Sen. McKinnon, Rep. Demers (Chairman, Growth Policy Subcommittee), Larry Branch (Chairman, Demographic Information Subcommittee), Sen. Saltonstall (Chairman, Land Use Subcommittee), and Adriana Gianturco (acting Director of the Office of State Planning (OSP)) met to consider the April 27th Working Draft of the bill. The steering committee expressed an interest in the legislation and decided to have Frank Keefe (newly appointed Director of OSP) review it, particularly in terms of its consistency with the goals of OSP.

On May 22nd, the steering committee of the Wetmore Commission met with Frank Keefe. Mr. Keefe indicated support for a joint legislative-administrative approach in the formulation of growth and development policies for the Commonwealth. He requested two weeks to review the bill and to make recommendations to the Governor.

On June 18th, Mr. Keefe, Rep. Wetmore, Sen. McKinnon, and Sen. Saltonstall met with Governor Dukakis to discuss the legislation and OSP's proposed revisions.

The Governor endorsed the legislation contingent upon the revisions suggested by OSP.

On June 25th, the Land Use Subcommittee met to consider the changes proposed by OSP. Several revisions were made and the bill was sent to the Commission for approval.

On July 2nd, the Wetmore Commission approved the legislation and submitted it with an interim report to the General Court.

This bill, entitled "An Act Providing for the Formulation of a Massachusetts Growth and Development Policy," and the Subcommittee's April 27th working draft are included as the first section of this report. The bill initiates a step-by-step process that allows cities, towns, and regional planning agencies to participate in a one-year effort to formulate a state growth management and land use policy.

Over the next few months, the Land Use Subcommittee hopes to circulate the results of its deliberations and the draft of this bill to a wider audience of state and local officials, and citizens' organizations around the Commonwealth. Hopefully, this report will serve as a first step in this process. The report consists of four parts:

I. The working drafts of the bills that have resulted from the Subcommittee's discussions.
II. A series of backgroumd papers designed to bring citizens and public officials up to date on the latest thinking and research in the land use planning field.
III. The minutes of the 1975 Subcommittee meetings.
IV. An appendix including statements and memoranda submitted to the Subcommittee by its members and state and local officials.

The Land Use Subcommittee considers the issues discussed in this report to be of critical importance to the future of the Commonwealth. For this reason, both this report and its predecessor (issued in February of 1975) are designed

to inform the public of the process that the Subcommittee has been engaged in over the past year, and the manner in which it has reached its current initial recommendations. These recommendations are, indeed, only a first step, and it is hoped that this report and the work of the Subcommittee will stimulate greater interest and public participation in land use decision-making.

ACKNOWLEDGEMENTS

The background research for this report was funded by a grant from PACE (Planning Approaches for Community Environments, Inc.) at MIT. Kate Gardner prepared the background paper on State Land Use Control in Selected States. Joel Brenner prepared the background paper on Legislative Issues in Land Use and Development Planning. Ellen Wade prepared the background paper on the ALI Model Land Development Code. Charles Perry prepared the background paper on Re-Use and Revitalization of Central City Land. The staff would like to thank all of the members of the Land Use Subcommittee for their conscientious participation and input into the Subcommittee meetings throughout the winter and spring of 1975.

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THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Seventy- three

RESOLVE PROVIDING FOR AN INVESTIGATION AND STUDY BY A SPECIAL COMMISSION RELATIVE TO THE EFFECT OF PRESENT GROWTH PATTERNS ON THE QUALITY OF LIFE IN THE COMMONWEALTH.

RESOLVED, That a special commission, to consist of three members of the senate, seven members of the house of representatives, and five persons to be appointed by the governor, is hereby established for the purpose of making an investigation and study relative to the effect of present growth patterns on the quality of life in the commonwealth. Said commission shall specifically, but without limiting the generality of the foregoing, consider methods to align resource-use patterns with the limited supply of natural resources in the commonwealth, including a broad transformation of current values which lead to unrelieved consumerism; establishing a state demographic information center with the duty of collecting, interpreting, and distributing population information to aid cities and towns in planning for the future; establishing a settlement policy for the commonwealth based on its economic and natural resources and safeguarding the rights and needs of traditionally disenfranchised groups in the commonwealth including the urban poor of all races and nationalities, the elderly, and the young; the desirability of specific methods of community, regional, and state planning, including specific growth limitation, shared land-use responsibility, relocation possibilities, tax incentives, use of rural communities to absorb population growth or preservation of rural areas and open spaces; and the possibilities for cooperation with adjacent states with the intent of achieving the best growth patterns for the New England region.

Said commission may travel without the commonwealth, and shall report to the general court not later than September first, nineteen hundred and seventy-five.

House of Representatives, August 2, 1973.

Passed, Thomas W. Pappas, Acting Speaker.

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AGENDA OF 1975 SUBCOMMITTEE MEETINGS

February 13:	Innovative Land Use Planning and Regulatory Activities in Other States
February 27:	Meeting of the Special Commission with Governor Dukakis to discuss State Growth and Land Use Policy and the creation of the Office of State Planning
March 13:	Land Use Planning from the Standpoint of Those Who Use Land in the Production of Natural Resources--Agriculture, Forestry, Open Space
March 27:	Analysis of Major Land Use Legislation Submitted to the 1975 Session of the General Court
April 10:	Re-use and Revitalization of Central City Land
April 24:	Working Session to Analyze Initial Draft of Proposed Land Use Legislation Prepared by the Subcommittee Staff
June 19:	Presentation of the Findings of the SENE Study and Announcement of the Governor's Recommendations on the Working Draft of the Proposed Legislation
June 25:	Subcommittee Consideration of OSP and the Governor's Recommendations and Discussion of RPA's Role in Implementing the Proposed Process

I. AN ACT PROVIDING FOR THE FORMULATION OF A MASSACHUSETTS GROWTH AND DEVELOPMENT POLICY

A. COPY: DRAFT ONLY

THE COMMONWEALTH OF MASSACHUSETTS

IN THE YEAR ONE THOUSAND NINE HUNDRED AND SEVENTY-FIVE

AN ACT PROVIDING FOR THE FORMULATION OF A MASSACHUSETTS GROWTH AND DEVELOPMENT POLICY

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

The provisions of this bill are such that any delay in their implementation would cause immediate hardship and waste of financial resources. The provisions of this bill, therefore, take effect upon passage. This act may be referred to as the "Massachusetts Growth Policy Development Act".

WHEREAS uncoordinated growth and development patterns in the commonwealth in the past have often: --

- detracted from a healthy statewide economy by allowing new development to compete with and to undermine rather than to complement existing economic centers in existing population and employment centers;
- squandered scarce land and energy resources through location choices and construction designs that encouraged low density sprawl at great distances from existing residential, commercial and industrial development;
- increased social and economic fragmentation by separating urban workers from convenient, productive and rewarding job opportunities and by increasing the necessity for expensive automotive transportation to distant job centers;
- permitted some cities and towns to take unfair advantage of other municipalities by placing development near municipal boundaries such that all revenues accrue to the host community while significant impacts must be borne by neighboring communities; and
- resulted in ever increasing amounts of public investment for roadways, schools, sewer and water facilities, etc. to accommodate a sprawl development pattern, which manifested itself in more burdensome local, state, and federal taxes, while prior expenditures on public improvements in existing employment and population centers have been underutilized in many communities.

This act has the following purposes:

1, the initiation of a locally-oriented, participatory planning process to enable representatives from various interest groups in each municipality in the commonwealth to evaluate the effects of unplaned and uncoordinated growth and development patterns; formulate future growth and development goals which meet the needs of the diversity of residents in each municipality; coordinate local growth and development goals with the goals of neighboring municipalities and with regional needs; and to contribute substantially in the formulation of state growth and development policies and objectives.

2. the involvement of citizens and officials, regional planning agencies, the office of state planning and various additional state agencies and members of the general court in the development of recommendations to alleviate past problems caused by unplanned and uncoordinated growth and development.

3. the development of policies and objectives and possible appropriate tools for implementation to encourage, to facilitate, and to expedite economic and industrial development and to balance such development with the preservation of the commonwealth's unique environmental resources.

SECTION 2

As used in this act the following terms shall have the following definitions: --
"Agency" -- the office of state planning in the executive office for administration and finance;
"Statement" -- statement of growth problems and priorities prepared by a city or town;
"regional planning agency" -- one of the thirteen commissions or councils created pursuant to chapter forty B of the general laws or by special act;
"Regional Report" -- a report on growth management problems and priorities prepared by a regional planning agency.
"areas of critical planning concern" --

a. areas suitable for commercial and industrial development, or irreversible
b. an area where uncontrollable development could result in irreversible damage to important historical, environmental, natural or archeological resources, or
c. an area possessing inland or coastal wetlands, marshes or tidal lands, or
d. beaches and dunes, or
e. significant estuaries, shorelands, and flood plains of rivers, lakes, and streams, or
f. significant agricultural, grazing, and watershed lands, or
g. forests and related lands which require long stability for continuing renewal, or
h. areas with unstable soil or high seismicity, or
i. an area significantly affected by or having a significant effect upon an existing or proposed major public facility, or other area of major public investment;

"development of regional impact" -- any proposed development which, because of its character, magnitude, or location would have a substantial effect upon the health, safety, welfare of citizens outside the jurisdiction of a single municipality;
"Committee" -- a Local Growth Policy Committee.

SECTION 3

Within one month of the effective date of this act there shall be created in every municipality of the commonwealth a Local Growth Policy Committee composed of:

a. the chief elected official of the municipality, except in the case of a city with a Plan E form of government, in which case it shall be the city manager; the chairmen of the planning board and conservation commission, if one exists; the directors of the housing authority, if one exists, redevelopment authority, if one exists, and the department of public health; the city or town planner, if one exists;

b. five residents of the municipality, representative of disparate social, economic and environmental interests, to be appointed by the moderator, in the case of a town, or the chief executive officer, in the case of a city.

The planning board of each municipality shall be the lead group in administering the activities of the Local Growth Policy Committee. The chairman of the planning board will call the first meeting of the Committee, at which meeting a chairman of the Committee shall be selected, who in turn will have the responsibility to see that the Committee fulfills all of its functions as described in section five and submits its completed statement to the designated agencies. Upon submission of the Statement to the regional planning agency the committee shall be dissolved.

SECTION 4

Within one month of the effective date of this act the Agency shall send to the moderator of every town and to the chief executive officer of every city a request for a Statement of Growth Management Problems and Priorities which shall be in a standardized format. The format for the Statement will be prepared by the Agency and should include questions and requests for proposed policies relating to the following:

a. a description of local growth management problems of highest priority, with particular reference to --
   1. the most significant changes, both recent and anticipated, in population density, economic base, and intensity and direction of development;
   2. conflicts involving land needed and suitable for: recreation, parks and open space; scientific and educational purposes; industry and commerce; the generation and transmission of energy; solid waste management and resource recovery; transportation; urban development, including the revitalization of existing communities and the economic bases of those communities health, education and other state and local governmental services, and multiple-use siting of facilities and activities;
   3. identification of prime forest and agricultural lands and areas of significant mineral deposits, and steps taken to conserve them anticipated demands for scarce natural products; and threats to agricultural and forest production, mining and forestry -- including changing land values, the tax structure and ecological factors;
   4. conflicts or significant changes regarding water supply and sewerage;
   5. the most significant changes, both recent and anticipated, in environmental, geological and physical conditions which influence the desirability of various uses of land;
   6. the most significant zoning variances and special permits granted or refused, and all zoning bylaw changes make, during the three years prior to the effective date of this act;
   7. changes in the housing needs and in the housing opportunities for all income groups in the city or town, and reasons therefor and changes in the amount, type and location of land available for housing construction in the city or town;
   8. requirements for building and other permits that have impeded desirable growth and development;
   9. needs for new job development and kinds of commercial and industrial development that will best satisfy those needs.

b. identification of specific developments of regional impact and of areas of

critical planning concern in or near the responding municipality, and proposed criteria for the identification thereof;

c. reactions to brief descriptions of alternative administrative models for implementing land use and growth management policy within the commonwealth, which descriptions shall be prepared by the Agency

d. comments on the ways in which the activities of state agencies involved in the allocation of state and federal funds for economic development, capital improvements, open space preservation, and other activities related to land use can be coordinated to prevent waste and inefficiency;

e. a description of the community's goals for growth and/or conservation and an assessment as to whether existing laws are adequate for achieving these goals;

f. an assissment of the type and costs of public improvements--sewers, water-lines, trash disposal facilities, roadways, etc.--now needed to accommodate the existing population and employment of the community and likely to be needed if population continues to increase and if economic growth is to be made possible.

SECTION 5

Within four months following receipt of the request for a Statement from the Agency, the Committee shall as soon as possible after its formation, publicize its existence and activities by announcement at town or city council meetings and by other reasonable means; conduct whatever inquiries required to prepare the Statement· make reasonable efforts to meet with and ascertain the views of all interested persons and groups regarding local growth management and land use policy complete a tenative Statement in accordance with the terms of the request made pursuant to section four above. The Committee shall, insofar as possible, rely on existing information in preparing its tentative Statement.

Within three months of receipt of the request for a Statement from the Agency, the Committee shall hold a public hearing at which interested persons and groups shall be afforded an opportunity to present data, views or arguments in regard to the tentative Statement orally or in writing. Elected municipal officials as well as state representatives and senators shall be especially invited to review and formally to comment upon the tentative Statement. However, no person or group shall be required to make presentations or arguments in writing.

At least fourteen days prior to the hearing required in this section, notice thereof shall be published in a newspaper of general circulation published in the city or town and shall be psoted in at least five public places in the city or town. If there is no such newspaper in the city or town, then notice shall be published in a newspaper of general circulation in the area. The notice shall refer to this act; give the date, time and place of the hearing; state that the subject of the hearing shall be the tentative Statement in response to the request from the Agency· and that copies of same shall be available from the clerk of the city or town. A copy of said notice shall be sent upon publication to the appropriate regional planning agency and to the Agency. The cost of newspaper publication shall be borne by the municipality for which the Statement was prepared.

The Committee shall revise its tentative Statement on the basis of testimony from

the public hearing and within 3 months of receipt of the request for a Statement from the Agency shall submit the Statement in final form through the offices of the municipal clerk to the appropriate regional planning agency; all special purpose governmental units of which the municipality may be a part; the Agency; and all contiguous municipalities and the county in which the municipality is located. Any county, special purpose governmental unit, private citizen, organized group, or local board commission or committee that may choose to comment on a Statement received from a municipality pursuant to section five of this statute, shall submit such comments to the Agency, the relevant regional planning agency or agencies and the relevant municipality or municipalities.

SECTION 6

Within seven months of the effective date of this act, each regional planning agency in the commonwealth shall prepare, revise in accord with citizen comments and concern, endorse, and forward to the Agency and to its constituent municipalities a Regional Report. Each Regional Report shall

a. make a preliminary determination that each city and town in the planning district is or is not in substantial compliance with sections three through five of this act;
b. summarize the major findings and recommendations of the local Statements
c. provide, based upon consideration of the Statements received pursuant to section five of this statute
   1. an assissment of inter-municipal conflicts within the region; local-regional conflicts, including but not necessarily limited to conflicts between municipalities and the regional planning agency and conflicts between municipalities and counties; conflicts between special purpose governmental units and any other units of government; and conflicts involving counties and regional planning commissions with one another;

   2. a statement of steps taken if any, to resolve said conflicts, such as but not limited to bilaterial meetings between parties in conflict, mediation by the regional planning agency or legal action; and obstacles, if any, which may prevent the resolution of such conflicts, such as but not limited to inadequate technology or information or funding, or the lack of an adequate forum for resolving disputes.

   The Agency shall review all Statements prepared pursuant to sections four through six, inclusive, of this act, to determine whether they are in substantial compliance with the terms of those sections.

d. define regional growth management problems of highest priority, with particular reference to
   1. the most significant changes, both recent and anticipated, in population, economic base, and intensity and direction of development;
   2. conflicts involving land needed and suitable for industry and commerce; urban development, including the revitalization of existing communities withlimited economic bases; recreation parks and open space; scientific and educational purposes; the generation and transmission of energy; solid waste management and resource recovery; transportation; health, education, and other state and local governmental services; and multiple-use siting of facilities;

3. identification of prime forest and agricultural lands and areas of significant mineral deposits, and steps taken to conserve them; anticipated demands for scarce natural products; and threats to agricultural and forest production, mining and forestry--including changing land values, the tax structure, and ecological factors;
4. conflicts or significant changes regarding water supply and sewerage;
5. the most significant changes, both recent and anticipated, in environmental, geological, and physical conditions which influence the desirability of various uses of land;
6. changes in the housing needs and in the housing opportunities for all income groups in the region and in adjacent communities, and changes in the amount, type and location of land available for housing construction in the region;
7. requirements for building and other permits that have impeded desirable growth and development;
8. descriptions of the character and location of major commercial and industrial development that should be encouraged and facilitated by local, regional, and state agencies.

e. identify, taking into account the Statements received pursuant to section five of this statute, specific developments of regional impact and areas of critical planning concern in the region, and shall propose criteria for the future identification thereof;
f. reactions to brief descriptions of alternative administrative models for implementing land use and growth management policy within the commonwealth, which descriptions shall be prepared by the Agency;
g. comment on the ways in which governmental activities may be better coordinated to prevent delays and inefficiency in the implementation of vital development projects; and
h. evaluate the importance of prospective property tax revenues asaa factor in the local decision making process regarding proposed development and assess the role the property tax plays in attempting to view development from a regional perspective.

SECTION 7

Within eight months of the effective date of this act, there shall be created an Massachusetts Growth Policy Commission composed of three members of the house of representatives, to be appointed by the speaker of the house; three members of the senate, to be appointed by the president of the senate; and ex officio, the secretaries of communities and development, environmental affairs transportation and construction, administration and finance and manpower affairs, or their designated representatives.

Within nine months of the effective date of this act, the Agency shall prepare and submit to the Commission a report containing but not necessarily limited to: --

a. a summary of significant local and regional growth management problems, priorities and conflicts;
b. a summary of criteria proposed locally and regionally for the designation of areas of critical planning concern and developments of regional impact;
c. a summary of local and regional reactions to alternative administrative models for implementing land use and growth management policy within the commonwealth;

d. strategies for coordinating the activities of state agencies involved in the allocation of state and federal funds for economic development, capital improvements, open space preservation and other activities related to land use;
e. a description of the roles local and state taxes play in the pattern of growth and development;
f. approaches to minimizing the time and cost of obtaining all permits and licenses and of completing all review procedures in order to expedite the private development process for projects consistent with sound growth policies and objectives; and
g. a recommended growth policy for the commonwealth, which shall reflect both local and regional preferences and capabilities, as manifested in the Statements and Regional Reports prepared pursuant to this act, and issues of statewide concern.

Within eleven months of the effective date of this act, the Commission shall prepare and shall with the concurrence of a majority of its members submit to the general court and to the governor a report which shall include but need not be limited to the following elements:--

a. standards and, where appropriate, new mechanisms, instrumentalities and processes to guide growth and development into those areas where they will be most desirable to facilitate community revitalization, to generate new economic vitality, to minimize adverse environmental effects and to conserve open land and natural resources;
b. criteria for identifying areas of critical planning concern and developments of regional impact;
c. approaches to minimizing the time and cost of obtaining all permits and licenses and of completing all review procedures required for development; and
d. strategies for coordinating the activities of state agencies involved in the allocation of state and federal funds for economic development, capital improvements, open space conservation and other activities related to land use.

Each element shall incorporate locally and regionally proposed standards insofar as they may be internally consistent. Upon submission of this report to the general court, the Commission shall be dissolved.

Section 8

The Agency is hereby authorized to provide technical assistance to any regional planning agency which may request such assistance for the purpose of compliance with this act. Regional planning agencies are hereby authorized to provide technical assistance to any municipality which may request such assistance for the purpose of compliance with this act.

SECTION 9

The provisions of this act shall be deemed severable. If any of its provisions shall be held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

This is a temporary act and, as such, all of its provisions must be carried out no later than July 1, 1977.

THE COMMONWEALTH OF MASSACHUSETTS

IN THE YEAR ONE THOUSAND NINE HUNDRED AND SEVENTY-FIVE

RESOLVE

TO DIRECT THE SPECIAL COMMISSION ON THE EFFECTS OF GROWTH PATTERNS SPECIFICALLY TO INVESTIGATE THE MEANS TO EVALUATE THE GROWTH IMPACTS OF CERTAIN LEGISLATION UNDER CONSIDERATION BY THE GENERAL COURT

RESOLVED, That the scope of study of the special commission, created according to chapter ninety-eight of the resolves of nineteen seventy three, be specifically broadened to include the investigation of a procedure by which certain legislative petitions, filed with the general court, might be systematically evaluated for their impacts on the growth patterns of the commonwealth, and further, that said commission shall recommend to the general court means by which such evaluation of legislation might be established in behalf of the general court, including the establishment of a legislative committee.

Said commission may travel without the commonwealth, and shall report to the general court not later than December first, nineteen hundred and seventy-six.

B. Letter from Frank Keefe

The Commonwealth of Massachusetts
Executive Office for Administration and Finance
Office of State Planning and Management
Frank T. Keefe
DIRECTOR
Lovereit Saltonstall Building, Room 909
100 Cambridge Street, Boston 02202
AREA CODE 617
727-5066

June 19, 1975

The Honorable Robert D. Wetmore
Chairman
Special Commission on the Effects of Growth
Patterns on the Quality of Life in the
Commonwealth
State House, Room 473F
Boston, Massachusetts

Dear Representative Wetmore:

I have recommended to the Governor that the Office of State Planning support the early submission and eventual approval of the Commission's legislation, "An Act to Promote Local and Regional Participation in the Development of State Growth and Development Policies". As you know, the Governor endorsed this recommendation at our meeting with him yesterday.

My reasons for this recommendation are as follows:

a) The Commission and its Land Use Sub-Committee have worked long and hard on this legislation and believe that a "bottom-up" participatory approach is essential to the credibility and acceptability of any State initiated ("top down") growth policy and management program.

b) It is the view of the Commission that all of this work will go for naught if the support of the Governor through the Office of State Planning does not emerge.

c) The local and regional participation necessary for the proper functioning of OSP's planning efforts could be enhanced and extended substantially by the enactment of special legislation which formally encourages such participation.

d) The legislation would tend to attract public attention to and eventually increase public understanding of growth and development issues much more successfully than administrative efforts alone.

e) The legislation, if passed, would put the General Court on record as concerned about the reconciliation of economic development and environmental protection as well as in the position of collaborators in the effort to improve the State's policies and programs for growth management.

f) The legislation is laudable in so far as it extends to the 351 communities and 13 regions the opportunity to participate in the development of growth policy and program evaluation at the State level. As such, it would serve the purpose of providing an effective response to any possible complaint that people at the local level were not involved in the process.

Our support, however, is contingent upon the following revisions to the legislation:

1) Remove all sanctions for communities that either choose not to take advantage of the opportunity to participate in the process or fail to comply with the schedule for completing the statement on growth problems and priorities.

2) Delete the requirement that the end result of the deliberations of the Office of State Planning and the Special Commission would be "growth management and land use policy legislation". It would be better if the submission of legislation were simply an option and not a requirement.

3) Adjust the proposed time frames so that the local statements would be prepared in three months, the regional reviews in one month, and the State's review by OSP (with a summary and recommendations) within two months. This would not only convey a needed sense of urgency but conform better with the work schedule of the Office of State Planning, making this legislatively provided participatory process supportive of the State's administrative leadership in improving growth management.*

4) Drop all mention of small grants from the State to communities to finance the preparation of the local statements. Instead, mention should be made of the opportunities for free technical assistance from the regional planning agencies and the Division of Local Assistance in the Executive Office of Communities and Development.

5) Replace the provision for endorsement of all local statements by town meetings with a requirement that Boards of Selectmen be given an opportunity to submit a formal review and comment on the local statements.

6) Insert a preamble to the legislation which describes the economic, environmental and social issues and concerns of poorly planned and mis-managed growth and development.

I am certain that together we can initiate a joint legislative-administrative process which will result in a clearer sense of growth and development policies and in an improved growth management program for the Commonwealth. The Commission must be commended for its excellent efforts toward this end.

Sincerely,

Frank T. Keefe
Director of State Planning

FTK:ejs

* The time schedule was later adjusted to provide for eleven months for the completion of the process. See times allotted in the draft preceding this letter.

C. Summary of the Bill

AN ACT RELATING TO LOCAL AND REGIONAL PARTICIPATION IN THE FORMULATION OF A GROWTH MANAGEMENT AND LAND USE POLICY FOR THE COMMONWEALTH

This act initiates a step-by-step process that allows cities, towns, and regional planning agencies to participate in a two-year effort to formulate a state growth management and land use policy.

Each municipality is asked to establish a Local Growth Management Committee with responsibility for preparing a Statement of Growth Management Problems and Priorities. Small Grants are available to support the work of these committees. These Statements will identify local developments with regional impact and local areas of critical planning concern. Localities will be asked to react to specific intergovernmental models for land management (such as the Martha's Vineyard Bill). Cities and towns will also be encouraged to comment on the ways in which land use related activities of state agencies can be coordinated more effectively. Finally, communities are asked to describe ways of minimizing the time and cost involved in obtaining permits and licenses needed to proceed with development.

A municipality is free not to supply this statement, but communities that do comply will receive first priority in the allocation of federal aids to planning such as HUD 701 funds and other grants administered by the state government. Failure to comply will result in unfavorable state and area-wide A-95 reviews for most subsequent federal grant applications.

Regional planning commissions (RPA's) are asked to review local statements and prepare composite Regional Reports describing regional growth management problems and priorities. These Reports should also identify developments of regional impact and areas of critical planning concern from a regional point of view.

Within eighteen months of enactment of the Bill the Office of State Planning will prepare a Summary Report containing a review of the most pressing local and regional growth management problems and priorities. This Summary Report will also include guidelines and standards for designating areas of critical planning concern and developments of regional impact as well as strategies for more effective coordination of the land use related activities of state agencies. The Summary Report will also contain an analysis of alternative intergovernmental models for land management.

Based on the local Statements and Regional Reports, the Office of State Planning will summarize recommended growth policies reflecting both local and regional preferences as well as statewide concerns.

The Report of the Office of State Planning will be submitted to a temporary Commission composed of three members of the House of Representatives, three members of the Senate, and five secretaries designated by the Governor. Within twenty-four months of the effective date of this Act the Commission will

submit Growth Management and Land Use Policy Legislation to the General Court. This legislation will be based on the Summary Report of the Office of State Planning and on the Commission's review of the material submitted by communities and regional planning agencies.

This Act will ensure that localities and regional planning agencies are fully involved in the formulation of statewide growth management and land use policy. It will also guarantee that the criteria for defining developments of more than local impact and areas of critical planning concern reflect local and regional preferences. The Act will encourage extensive public participation in the setting of development and conservation priorities. The preparation of local Statements and Regional Reports should help to eliminate some of the obstacles and delays that presently hinder development activities in areas in which residents desire additional growth.

The Act entails the expenditure of only a very small amount of state money over the next two years. These funds will be used to cover the costs of providing for local and regional participation. The Bill ensures that a statewide growth management and land use policy will be formulated from the "bottom up", but that strong legislation protecting critical environmental resources, encouraging economic development where it is most desirable, and pulling together fragmented state planning and management activities will, indeed, be forthcoming within twenty-four months.

D. Working Draft, 27 April, 1975

For Purposes of Discussion

AN ACT RELATING TO LOCAL AND REGIONAL PARTICIPATION IN THE FORMULATION OF A GROWTH MANAGEMENT AND LAND USE POLICY FOR THE COMMONWEALTH

SECTION 1. The development of a statewide growth policy is a matter of urgent public concern, and it is imperative that such a policy reflect the problems of managing growth at local and regional levels of government, and it is essential that public and private development and conservation preferences be reflected in such a state growth policy:-

(1) to identify critical problems attributable to the pace and scope of development, and strategies for responding to them;

(2) to identify developments which, because of their character, magnitude, or location would have a substantial effect upon the health, safety, or welfare of citizens outside the jurisdiction of a single municipality;

(3) to identify areas of critical planning concern;

(4) to devise ways of minimizing the time and cost of obtaining all permits and licenses and of completing all review procedures required for development; and

(5) to prevent waste and inefficiency by encouraging more effective coordination of the activities of state agencies involved in the allocation of state and federal funds for capital improvements, open-space development, and other activities related to land use.

(6) to establish statewide economic development and land use goals, objectives, and policies in accordance with the priorities of the people of the Commonwealth.

SECTION 2. The following words shall, for the purpose of this act, have the following meanings unless the context otherwise requires:-

(1) "Agency," the office of state planning in the executive office of administration and finance.

(2) "Statement," a statement of growth management problems and priorities prepared by a city or a town.

(3) "Regional planning commission," one of the twelve commissions established by chapter forty b of the General Laws or by special act.

(4) "Regional Report," a report on growth management problems and priorities prepared by a regional planning commission.

(5) "Area of critical planning concern,"
(a) an area where uncontrollable development could result in irreversible damage to important historical, environmental, natural, or archeological resources, or
(b) an area possessing inland or coastal wetlands, marshes, or tidal lands, or
(c) beaches and dunes, or
(d) significant estuaries, shorelands, and floodplains of rivers, lakes and streams, or
(e) significant agricultural, grazing and watershed lands, or

(f) forests and related lands which require long stability for continuing renewal, or

(g) areas with unstable soil or high seismicity, or

(h) an area significantly affected by or having a significant effect upon an existing or proposed major public facility, or other area of major public investment.

(6) "Development of regional impact," any proposed development which, because of its character, magnitude or location would have a substantial effect upon the health, safety and welfare of citizens outside the jurisdiction of a single municipality.

(7) "Municipality," a town, city or county.

(8) "Committee," a local growth policy committee.

SECTION 3. There is hereby created in every city and town a local growth policy committee composed of ex officio, the chief elected official of the city or town, the (heads) of the local planning board and conservation commission, the building inspector, and the (head) of the local housing authority, if there is one, the (head) of the redevelopment authority, if there is one, and the (head) of the public health department, and five residents of the city or town, who shall be representative of disparate social, economic and environmental interests, and who shall be appointed by the (moderator of the town) or the mayor of the city by (_____) 1, 1976.

The clerk of the city or town shall forthwith send the names of the members of the committee to the agency.

The planning board, if one exists, shall constitute staff to the committee.

SECTION 4. By (_____) 1, 1976, the agency shall prepare and send to the moderator of every town and the mayor of every city a request for a statement of growth management problems and priorities, which shall be in a standardized format. The request for a statement shall require:-

(a) a description of local growth management problems of highest local priority, with particular reference to

(1) significant changes, both recent and anticipated, in population density, economic base, and intensity and direction of development;

(2) conflicts involving land needed and suitable for: recreation, parks and open space; scientific and education purposes; industry and commerce; the generation and transmission of energy; solid waste management and resource recovery; transportation; urban development, including the revitalization of existing communities and the economic bases; health, education, and other state and local government services; and multiple-use siting of facilities and activities;

(3) identification of prime forest and agricultural lands and areas of significant mineral deposits, and steps taken to conserve them; anticipated demands for scarce natural products; and threats to agricultural and forest production, mining, and forestry--including (a) changing land values, (b) the tax structure, and (c) ecological factors;

(4) conflicts or significant changes regarding water supply and sewerage;

(5) significant changes, both recent and anticipated, in environmental, geological and physical conditions which influence the desirability of various uses of land;

(6) significant zoning variances and special permits granted or refused, and all zoning by-law changes made, during the three years prior to the effective date of this act, or in the case of cities with a population greater than one hundred thousand, during the one year prior to the effective date of this act.

(7) changes in the housing needs and in the housing opportunities for all income groups in the city or town, and reasons therefore; and changes in the amount, type and location of land available for housing construction in the city or town;

(8) requirements for building and other permits that have impeded desirable growth and development;

(b) identification of specific developments of regional impact and of areas of critical planning concern in or near the responding municipality, and proposed criteria for the identification thereof;

(c) reactions to brief descriptions of alternative administrative models for implementing land use and growth management policy, which descriptions shall be prepared by the agency;

(d) comments on the ways in which the activities of state agencies involved in the allocation of state and federal funds for economic development, capital improvements, open-space preservation and other activities related to land use can be coordinated to prevent waste and inefficiency.

SECTION 5. Within the _____months following receipt of the request for a statement from the agency, the committee shall:-

(a) publicize its existence and activities by announcement at town or city council meetings and by other reasonable means;

(b) conduct whatever inquiries and studies it deems necessary to collect information solicited by the request;

(c) make reasonable efforts to meet with and ascertain the views of all interested persons and groups regarding local growth management and land use policy;

(d) prepare a tentative statement in accordance with the terms of the request made pursuant to section four. The committee shall, insofar as possible, rely on existing information in preparing its tentative statement.

SECTION 6. Within_____months of receipt of the request for a statement from the agency, the committee shall hold a public hearing at which interested persons and groups shall be afforded an opportunity to present data, views, or arguments in regard to the tentative statement orally or in writing; except that no person or group shall be required to make presentations or arguments in writing.

At least fourteen days prior to the hearing required by this section, the committee shall publish notice thereof in a newspaper of general circulation published in the city or town, and shall be posted in at least five public places in the city or town. If there is no such newspaper in the city or town, then the committee shall publish notice in a newspaper of general circulation published in the county. The notice shall (1) refer to this act; (2) give the date, time, and place of the

hearing; (3) state that the subject of the hearing shall be the tentative statement in response to the request for a statement from the agency, and that copies of same shall be available at the office of the clerk of the city or town.

The committee shall, upon publication, send a copy of said notice to the regional planning commission and to the agency.

SECTION 7. Within sixty days following the hearing required by section six of this act, the planning board of the city or town, or where there is no planning board, the board of selectmen or town council, shall forward to the city council, the board of selectmen, or the town council its tentative statement, or its tentative statement as amended following public hearings pursuant to section six of this act.

SECTION 8. The tentative statement or the same as amended shall be submitted to the next town meeting or to the next meeting of the city council following its receipt from the planning board, or where there is no planning board, from the board of selectmen, at which time it may be approved or amended and approved. Amendments and approval shall be by a majority vote of members present and voting.

Any minority proposal for a statement that shall have the approval of twenty-five percent of the members present and voting shall be incorporated into the statement as an appendix thereof.

A copy of the statement approved by a town meeting or city council shall be submitted forthwith by the city or town clerk to (1) the regional planning commission; (2) all district commissions or political subdivisions of which the city or town may be a part; (3) the agency; and (4) all contiguous municipalities, including the county in which the city or town is

located. If the town meeting or city council shall not approve a statement in compliance with this act notice of that fact shall be sent forthwith by the city or town clerk to the regional planning commission and to the agency.

SECTION 9. Any county, district commission, or other political subdivision of which the city or town may be a part may choose to comment on a statement received from any city or town pursuant to section eight of this act, shall submit such comments to (1) the agency, (2) any regional planning commission, and (3) any municipality.

SECTION 10. Each regional planning commission shall prepare and forward to the agency a regional report by (_____) 1, 1976. Each regional report shall

(a) make a preliminary determination that each city and town in the region is or is not in substantial compliance with this act;

(b) define regional growth management problems of highest regional priority, with particular reference to

(1) significant changes, both recent and anticipated, in population, economic base, and intensity and direction of development;

(2) conflicts involving land needed and suitable for: recreation, parks and open space; scientific and education purposes; industry and commerce; the generation and transmission of energy; solid waste management and resource recovery; transportation; urban development, including the revitalization of existing communities and the economic diversification of existing communities with narrow economic bases; health, education, and other

state and local government services; and multiple-use siting of facilities and activities;

(3) identification of prime forest and agricultural lands and areas of significant mineral deposits, and steps taken to conserve them; anticipated demands for scarce natural products; and threats to agricultural and forest production, mining, and forestry--including (a) changing land values, (b) the tax structure, and (c) ecological factors;

(4) conflicts or significant changes regarding water supply and sewerage;

(5) significant changes, both recent and anticipated, in environmental, geological and physical conditions which influence the desirability of various uses of land;

(6) changes in the housing needs and in the housing opportunities for all income groups in the region and in adjacent communities; and changes in the amount, type, and location of land available for housing construction in the region;

(7) requirements for building and other permits that have impeded desirable growth and development.

(c) identify, taking into account the statements received pursuant to section eight of this act, specific developments of regional impact and areas of critical planning concern in the region, and shall propose criteria for the future identification thereof;

(d) reactions to brief descriptions of alternative administrative models for implementing land use and growth management policy, which descriptions shall be prepared by the agency;

(e) comment on the ways in which governmental activities may be better coordinated to prevent waste and inefficiency; and

(f) provide, based on consideration of the statements received pursuant to section eight of this act,

(1) an assessment of

(a) inter-municipal conflicts within the region;

(b) local-regional conflicts, including but not necessarily limited to conflicts between municipalities and the regional planning commission and conflicts between municipalities and counties;

(c) conflicts between district commissions or other special purpose governmental units and any other units of government; and

(d) conflicts involving counties and regional planning commissions with one another.

(2) a statement of

(a) steps taken, if any, to resolve such conflicts, including but not limited to bilateral meetings between parties in conflict, mediation by the regional planning commission, or legal action; and

(b) obstacles, if any, which may prevent the resolution of such conflicts, such as but not limited to inadequate technology or information or money, or the lack of an adequate forum for resolving disputes.

SECTION 11. The agency shall review all statements and regional reports to determine whether they are in substantial compliance with the terms of those sections.

A statement shall be deemed to be in substantial compliance with this act unless within sixty days after the receipt by the agency of the regional report prepared pursuant to section ten, the agency shall notify the board of selectmen, town council, or city council of its decision of noncompliance.

SECTION 12. Within eighteen months of the effective date of this act, there shall be created by operation of this act a Massachusetts growth policy commission composed of three members of the House of Representatives to be appointed by the Speaker of the House; three members of the Senate to be appointed by the President of the Senate; and ex officio, the secretaries of the following executive offices: communities and development, environmental affairs, transportation and construction, administration and finance and manpower affairs or their designated representatives.

SECTION 13. Within eighteen months of the effective date of this act, the agency shall prepare and submit to the commission a report containing but not necessarily limited to

(a) a summary of significant local and regional growth management problems, priorities, and conflicts;

(b) a summary of criteria proposed locally and regionally for the designation of areas of critical planning concern and developments of regional impact;

(c) a summary of local and regional reactions to alternative administrative models for implementing land use and growth management policy within the Commonwealth;

(d) strategies for coordinating the activities of state agencies involved in the allocation of state and federal funds for economic development, capital improvements, open-space development, and other activities related to land use;

(e) approaches to minimizing the time and cost of obtaining all permits and licenses and of completing all review procedures required for development; and

(f) a recommended growth policy for the Commonwealth, which shall reflect (1) both local and regional preferences and capabilities, as manifested in the statements and regional reports prepared pursuant to this act, and (2) issues of statewide concern.

SECTION 14. Within twenty-four months after the effective date of this act, the commission shall prepare and shall with the concurrence of a majority of its members, submit to the General Court and to the governor legislation which shall include but need not be limited to the following elements:

(a) standards and, where appropriate, new mechanisms, instrumentalities, and processes to guide growth and development into those areas where it will be most desirable, to facilitate community revitalization, to minimize adverse environmental effects, and to conserve prime open lands and natural resources;

(b) criteria for identifying areas of critical planning concern and of developments of regional impact;

(c) approaches to minimizing the time and cost of obtaining all permits and licenses and of completing all review procedures required for development; and

(d) strategies for coordinating the activities of state agencies involved in the allocation of state and federal funds for economic development, capital improvements, open space development, and other activities related to land use.

Each element shall incorporate locally and regionally proposed standards insofar as they may be internally consistent.

SECTION 15. Judicial review of any decision made under this act is hereby expressly precluded.

SECTION 16. Any city, town, or regional planning commission which fails substantially to comply with this act shall be conclusively deemed to be in nonconformity with the policies of the Commonwealth to establish a framework for coordinating intergovernmental planning and development activities, and to achieve the coordinated development of entire areas.

The state and all area-wide clearinghouses established pursuant to circular number A-95 of the office of management and budget, promulgated under section 401(a) of the Intergovernmental Cooperation Act of 1968, shall comment unfavorably on any application for, and shall recommend denial of, federal assistance by any city or town found to be in substantial nonconpliance with this act.

Any city or town which submits a statement in substantial compliance with this act and any regional planning commission that submits a report in substantial compliance with this act shall be given priority, insofar as it may lie in the competence of the state agency to do so, to receive funds under any of the following federal laws:-

(1) The Housing and Community Development Act of 1954, s. 701, 40 U.S.C. s. 461 (as amended);

(2) The Water Pollution Prevention and Control Act of 197__, s. 208, 33 U.S.C.A. s. 1288 (1975 Supp.);

(3) The Coastal Zone Management Act of 19___, s._____, 16 U.S.C.A. ss. 1451 et seq;

(4) The Urban Mass Transit Act of 1970, ss._____, 49 U.S.C. ss. 1601-1612;

(5) Farm Credit Act of 1971, 12 U.S.C. ss._____;

(6) Public Works and Economic Development Act Amendments of 1971, 42 U.S.C.A. ss. 3131-3135, 3141, 3152, 3161, 3162, 3171, and 3188a;

(7) Federal Clean Air Acts, 42 U.S.C. ss. 1857 et seq;

(8) The Rural Development Act of 1972; 7 U.S.C.A. ss. 2661-2668; 16 U.S.C.A. ss. 590h, 5900, 1001-1005;

(9) Federal-Aid Highway Acts of 1956, 1970, and 1973.

SECTION 17. The agency is hereby authorized to provide technical assistance to any city, town or regional planning agency which may request such assistance for the purpose of compliance with this act.

The agency and the department of community affairs shall make small grants available to cities and towns to enable them to comply with section five of this act. Funds appropriated under the Housing and Community Development Act of 1954, 701, 40 U.S.C. ss. 461 (as amended), shall be used for this purpose.

SECTION 18. The provision of this act shall be deemed to be severable, and if any of its provisions shall be held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

SECTION 19. This act shall take effect _____ 1, 1976.

II. SUBCOMMITTEE BACKGROUND PAPERS

A. STATE LAND USE CONTROL IN SELECTED STATES

Prepared by:
Katherine Gardner
2/3/75

STATE LAND USE CONTROL IN SELECTED STATES

I. Introduction

Throughout the United States, land use control traditionally has been exercised through local zoning ordinances and subdivision regulations. For the most part, these controls have been self-executing, non-compensatory restrictions intended to prohibit inappropriate development rather than to achieve beneficial development. Although it has become increasingly apparent that these controls are inadequate, they continue to be the primary regulatory mechanisms in most states. A number of states, however, have moved to replace local and private decision-making on important land use questions with some degree of state or regional control.

Some of the states were moved to action because of unique situations. In Florida, a severe two-year drought in a populous portion of the state preceded passage of the 1972 land use controls package. State activity has been motivated in part in response to prospective federal legislation. More generally, states have exercised control over land use where valuable natural resources have been threatened and development pressures are strong. Not surprisingly, legislation has reflected this environmental protection motivation. Short of adopting comprehensive controls, many states have focused on specific land uses of importance--e.g., shoreland and wetland development (California, Washington) or power plant siting (Washington). Legislation has generally failed to carry an eco-

nomic development component. The California legislation establishing the San Francisco Bay Conservation and Development Commission is perhaps an exception.

The case studies illustrate a logical progression of activities leading to the formulation of a state land use program. Problems are identified by state leaders or by the public through a specific emergency, a court decision, or through more general analysis of existing situations. Expression of interest in the problem is followed by a pattern of administrative study by a specifically appointed legislative or executive commission (e.g., the Vermont Commission on Environmental Control); a number of years of legislative scrutiny, perhaps with interim legislation to perceive the status quo; concurrent public education and input; legislation creating planning and administrative entities; development of a state plan; and initiation of a regulatory process. Local and regional bodies are, in some cases, given key roles in the planning and discriminating processes. Courts have proved an important arena for legitimizing state action.

The programs envisioned by the states are to greater or lesser degrees tailored to existing state structures and procedures, but tend to have common characteristics. The lead agencies tend to be part of state planning offices, but location of state planning offices within the governmental structure varies considerably. Regulatory activities which significantly affect land use are widely scattered and lead agencies are often charged with responsibility for coordinating these efforts. States

have assigned varying roles in the planning and regulating processes to their sub-state units. For example, Oregon and Colorado place primary responsibility for land use planning at the local level. Florida and Vermont make use of local governments and regional agencies in regulating land use, but place somewhat greater emphasis on state planning. All states call for citizen participation, but vary in the mechanisms used and stage at which citizen involvement is elicited. Citizen input may occur only at public hearings held by the planning commission or may be a direct part of the regulatory process as in Vermont. Consideration of land use legislation has not caused major organizational changes within legislatures, but some states have created special committees to insure legislative oversight and monitoring. (See, e.g., Oregon and Colorado)

Legislation on the books has not guaranteed administrative success. Legislative designs have not always placed decision-making at a level appropriate for consideration of the interests affected. In some instances, inter-governmental coordination in the planning process has been lacking. Substantively, the programs are not always consistent with stated goals. Political realities have occasionally necessitated exempting from regulation industries which threaten significant environmental harm. Regulatory standards enunciated have not always proved adequate. Initial years of administration have highlighted a greater need for land use information.

Below are case studies of eight states--California, Colorado, Florida, Maine, New York, Oregon, Vermont, and Washington--which have made noteworthy efforts in land use control. It is hoped that Massachusetts will be able

to learn the successes and failures of these programs. Information for these studies was taken from the following sources, with efforts being made to update where possible.

-Bosselman and Callies, The Quiet Revolution in Land Use Control, (1971) (report prepared for the President's Council on Environmental Quality).

-Staff Background Reports, Task Force on Natural Resources and Land Use Information and Technology (sponsored by the Council of State Governments.

-Committee on Interior and Insular Affairs, U.S. Senate, State Land Use Programs (with summaries prepared by the Environmental Quality Committee of the Young Lawyers' Section of the American Bar Association and Land Use Planning Reports).

-Massachusetts State Land Use Project, DCA, Reference Guide on Key Land Use and Resource Management Practices in other states (January, 1974) (report prepared for the Governor's Resource Management Policy Council).

-Massachusetts State Land Use Project, DCA, A Review and Analysis of Selected Key Land Use Regulatory Mechanisms (April, 1974) (report prepared for the Governor's Resource Management Policy Council).

-Thomas P. Salmen. "Land Use and Development--A Position Paper," National Capital Realtor (July, 1973).

-Colorado's new state land use control bill is workable solution based on all concepts, AIP Newsletter (October, 1974).

-Robert M. Rhodes. Florida's environmental land and water management act implements Article 7 of the proposed American Law Institute model code, AIP Newsletter (January, 1974).

-Richard G. RuBino. Florida's new land use law is among most comprehensive in nation, AIP Newsletter (April, 1973).

II. Case Studies--Eight States

California

Land use controls in California have been subjected to significant but unsystematic reform as voters, courts, and legislators have responded to specific environmental problems generated by uncontrolled growth. Noteworthy developments include the creation of the San Francisco Bay Conservation and Development Commission, efforts to preserve open space through tax relief and other measures and passage of a comprehensive coastal zone management act. In addition, there is pending legislation which, if passed, would create a state land use commission. The commission would designate critical environmental areas, developments of regional impact, and key facilities, and would review local plans for compliance with state plans.

The San Francisco Bay Conservation and Development Commission was created by the legislature in 1965 and authorized to prepare and plan for the future development of the Bay; the plan was completed in 1969 and adopted by the legislature.* The Commission was authorized to implement the plan by requiring permits from anyone (including state and local government agencies) seeking to develop the Bay or its shorelines. The Commission may grant a permit if it finds that a proposed project is necessary to the health, welfare or safety of the public in the entire Bay area or that it is consistent with the plan and enabling legislature. Predictably, developers complain that the Commission is excessively conservationist in its

*Successful passage of the legislation resulted from the determined efforts of an informal coalition of existing conservation groups and citizens organized to "Save the Bay" from being reduced to the "San Francisco River". The completed plan, itself, attracted broad support by offering a program which balanced both development and conservation.

application of these standards and conservationists argue that it is too accommodating to developers. Undoubtedly, the Commission has been successful in forestalling development of the Bay, but an interesting question raised is whether this merely increased developmental pressure and environmental damage elsewhere. One author has suggested that while, ideally a more comprehensive approach might be desirable, the focus on one specific area probably contributed substantially to the Commission's success in accomplishing its goals.

Expressed concern for preserving open space in California goes back as far as 1959, when the legislature authorized cities and counties to acquire lands with public funds for preservation as open space. The formation of special assessment districts to finance maintenance of open space was authorized in 1965 and in 1970, zoning for open space purposes was expressly authorized. However, perhaps most significant for preservation of open space were the passage of the "Breathing Space Amendment" (Article XXVIII) to the California Constitution and the Williamson Act tax relief measure. Article XXVIII created an exception for open space lands subject to enforceable restrictions to the state constitutional requirements that property taxes be assessed at "full cash value," "actual value," or "true value." The Williamson Act authorizes cities and counties to enter contracts with agricultural landowners restricting the use of their land to open space uses, sets forth certain minimum requirements for contract terms, and authorizes compensation to landowners primarily in the form of tax relief. The Act has been criticized on all fronts.

Landowners argue that tax savings are not adequate, penalties for cancellation too severe, and risks of taxation for technical failure to comply too high. Local governments continue to fear reduction in tax revenues and environmentalists feel that too much discretion is left to local governments and that speculators have received undue benefits from the Act. Further, it is said that the Act has not been successful in preserving open space near cities.

The California Coastal Zone Conservation Act of 1972 created a state commission and six regional commissions (appointed by the Governor, the Senate Rules Committee, the Speaker of the Assembly and local governments) to prepare a 1976 comprehensive plan for the conservation and management of the California Coastal Zone--an extensive land and water area stretching from Oregon to Mexico. The plan is to be consistent with goals of preserving, restoring, and enhancing the coastal environment and balanced utilization of coastal resources. The Act provides for strict controls on development while the plan is being prepared. No development can take place along the coast without a permit from the regional commission and no permit can be issued unless a regional commission determines that the project will not have substantial adverse environmental effects and will be consistent with the goals to be fulfilled by the Coastal Zone Plan.

Colorado

Colorado land use planning activities began in 1967 with the passage of the State Planning Act. The Act established an Office of State Planning within the Governor's office and authorized the planning office to develop a Colorado land use plan, to coordinate the planning activities of other state agencies, and to provide local and regional agencies with technical assistance. The following year, the state undertook a reorganization effort which eventually led to the abolition of the Office of State Planning and the creation of the Division of State Planning in the Department of Local Affairs (the state's 701 agency). The Division was given responsibility for maintaining demographic information, making an inventory of natural resources, collecting other information of planning importance, and providing local and regional planning assistance. The planning responsibilities formerly assigned the Office of State Planning devolved upon the Colorado Land Use Commission (LUC), an ostensibly temporary creation of the 1970 General Assembly. Thus, LUC was assigned the task of devising a state land use plan and recommending a program of implementation by December, 1973. In addition, LUC was given certain regulatory, financial, and technical assistance responsibilities.* LUC is authorized to establish criteria by which land uses will be classified as "matters of State concern, matters of regional concern, matters of local concern, or some other

*For example, in 1971, the Colorado Planning Aid Fund Act authorized LUC to make available planning funds for up to two thirds of the estimated total cost of any approved work program to municipalities, counties, and regional agencies with critical planning needs.

classifications." LUC has produced a plan and has established a land use information system. It has also developed model subdivision regulations. In developing its plans, LUC has held public hearings and has conducted meetings and workshops with local officials.

Other legislation recently adopted includes mandatory county planning commissions and subdivision control, mined land reclamation requirements, air and water pollution controls, authorization for planned unit development. Perhaps most significant, is 1974 legislation (House Bill 1041) providing for regulation of "matters of state interest" by local jurisdictions.

House Bill 1041 sets up a system whereby local jurisdictions are required to identify "matters of state interest", either geographic areas or activities. Jurisdictions are required to establish criteria for designating such areas, hold hearings, and set up their own systems of land use control for those designated areas. The Bill lists certain criteria and recommends the establishment of state guidelines, but localities are not required to designate everything encompassed by the Bill's criteria as matters of state interest. What the Bill seems to emphasize is local consideration and thought as to the importance of such varied things as rapid transit systems, archeological resources, power transmission lines and highway interchanges and their impact on land use. LUC has responsibility for monitoring local governments and if it feels that a locality has failed to designate a matter of state interest, it can formally request designation. This calls for public hearings on the matter and then a local decision. If the locality again rejects the designation, LUC may seek judicial review. The significance of designation is that development within such an area

must go through a locally controlled process,which includes public hearings, to receive a special permit. Moreover, development in areas which might be subject to designation also require a special permit. This requirement, together with immediate development pressures, has been successful in stimulating the planning process and rapidly bringing it into action.

Colorado's new land use legislation is notable in several other respects. First, the Bill authorized and the state has already funded $25,000 to every county to hire a planner and gear up to implement the Bill and establish liaison with relevant state agencies. Second, while the Bill contains elements of the ALI's Model Land Development Code, there is much that is unique to Colorado. Very strong local responsibility for implementation with only latent state power to intervene if necessary, represents an outcome responsive to strong local interests in a state which is still predominantly rural. Third, the Bill is acknowledged to be experimental, in many ways, a 2-year test for local jurisdictions. There may be great changes in the procedures and funding by 1976 if existing mechanisms do not work. Thus, the final institutionalization of state planning and coordinating functions in Colorado is not settled. In the interim, however, the state has been able to act within the context of a potentially feasible program to regulate growth, perhaps the major stimulus to land use control activity in Colorado.*

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*This is not, of course, the only possible stimulus. Federal program requirements, existing and anticipated, and confusion resulting from the diffusion of land use responsibilities among numerous state agencies, have also been cited as precipitating state land use activity.

Florida

During the early 1970's, the coincidence of several issues and events led to the enactment of a comprehensive state land use bill, the Florida Environmental Land and Water Management Act of 1972, and several related pieces of legislation: the Land Conservation Act, the Water Resources Act, and the Comprehensive Planning Act. Substantial growth in the two preceding decades had resulted in serious land use problems. An environmental crisis, a severe drought in southeastern Florida highlighted the need for basic changes in state land use management. Reapportionment of the state legislature and the election of a governor with strong environmental interests provided a responsive political climate.

The thrust of the Florida legislation is an attempt to protect the environment and its natural resources by coordinating state determined policy with local administration of land use regulations. In this design, the Florida legislation closely parallels the ALI code. The Act focuses on land development projects of a nature or in an area where regional or state goals would be affected. Thus, the state is empowered to designate specific geographic areas as areas of critical state concern and to establish principles to guide the development of those areas. An area of critical concern must meet one of three statutory standards: significant impact upon environmental, historical, natural or archeological resources of regional or statewide importance, impact upon major public facilities, or proposed site for a new community. Local governments may recommend areas of critical concern, and once an area is so designated, are given

six months to write land development regulations which would implement state principles. If local governments fail to act, the state must, itself, produce the regulations. The state is also empowered to adopt guidelines to be used in deciding whether land developments are developments of regional impact, in general, having a substantial effect on more than one county. As in the designation of areas of critical state concern, regional planning agencies and local governments may recommend types of development for designation as of regional impact. Permits issued by local governments are required for any development within an area of critical state concern or developments of regional impact.

Florida's Land and Water Management Act does not, itself, create new land use planning or regulatory organizations. The Governor and his cabinet are given responsibility for designating critical areas and adopting guidelines for developments of regional impact. The Division of State Planning (DOSP), an executive planning agency created by the 1972 Comprehensive Planning Act, makes recommendations to the Governor and his cabinet regarding this matter and has general responsibility for administering state responsibilities under the Act, for developing a state plan, approving local development regulations in areas of critical concern, and for giving technical assistance to local governmental agencies. A temporary citizens' group, the Environmental Land Management Study Committee, serves as an advisory body to the DOSP. The Act also designates a Land and Water Adjudicatory Commission, composed of the Governor and the cabinet, with responsibility to hear and rule on appeals relative to areas of critical state concern and developments of regional impact. Its

rulings are subject to judicial review.

The Florida Act grew out of a process which identified Florida's major land use problems, reviewed alternative approaches to problem solving, recognized existing legal constraints, and provided for political acceptability. Thus, the Act attempts to form a strong state-local partnership and yet provides a means whereby the State may interpose its interest in development issues. Elements of the Act should placate local officials, who fear loss of power, and individuals concerned with property rights. In its statement of purpose, the Act provides that land use policies should be implemented to the maximum extent possible by local governments through existing processes. Further, legislative concern with property rights was evidenced in a provision of the Act which stipulated that no critical areas could be designated prior to the passage of a bond issue with proceeds earmarked for land acquisition within designated critical areas (the funding authority--the Land Conservation Act of 1972--passed overwhelmingly). Perhaps even more important, the Land and Water Management Act placed a five percent limitation on the amount of land within the state which may at any time be designated of critical concern. Thus, the majority of land use decisions are still left to private individuals and localities. How well the partnership straddling these provisions will work remains to be determined. The partnership will require a strong local administrative base with existing or potentially operational local regulatory framework. It will require genuine cooperation. It has been suggested that the process by which the first critical area, Big Cypress, was designated--the by-pass of localities by legislative fiat--indicates that Florida

has a ways to go in establishing that cooperation.

An additional point worth noting is the potentially political nature of the state administrative and adjudicatory processes. Vesting these functions in the Governor and the cabinet offers the potential benefit of a process which is policy oriented and more responsive to the desires of the electorate. It presents the danger, however, of a lack of continuity, resulting from election turnarounds and the potential sacrifice of principle to policy or political pressure. In this respect also, the Florida strategy will bear observation before emulation.

Maine

In recent years, Maine has been confronted with two major environmental threats--oil and tourists. New interstate highways had placed Maine within a day's drive of populous New York and New Jersey. Affluence enabled many to enter Maine's second-home market. Concurrently, - particularly with its deepwater ports - Maine had become the target for a number of large oil-oriented industrial proposals spurred by expanding energy needs and the development of the super-tanker. Conservation groups began to highlight the need for protective measures. The legislature responded by adopting not one comprehensive land use management law, but rather a series of measures covering large-scale development, shorelands and wetlands, unzoned areas and specific endangered areas. Two major components of the state package are the Site Location of Development Law and the Land Use Regulation Commission Law. There are four companion statutes--the Wetlands Law, Mandatory Zoning and Subdivision of Shoreland Areas Law, and Solid Waste

Disposal Areas Law.

The Site Location Law gave to the Environmental Improvement Commission, an independent entity with ten members* appointed for three year terms by the Governor, the power to control the location and development "substantially affecting local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact." This mandate is carried out by a permit system which requires large commercial and industrial developments unless exempted specifically or by a grandfather clause** to obtain approval of the Environmental Improvement Commission. The Commission has authority to place conditions on the use of particular sites by developers and to deny the use of sites entirely if the environmental effect is sufficiently detrimental. After hearing, decisions of the Commission may be appealed directly to the Maine Supreme Judicial Court, where review is confined to a determination that the Commission acted within its authority and that the record contains substantial evidence to support the Commission's order.

The Land Use Regulation Commission Law empowers the Regulation Commission, an entity whose members are appointed by the Governor to establish land use guidelines for areas of the state without zoning and subdivision controls. Under this authority, the Commission classifies land within

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*The membership of the Commission is to represent the interests of manufacturing, conservationist, municipal, air pollution and public groups within the state.

**Generally, developments covered by the Act are those which require a state pollution control license, occupy a land area greater than 200 acres or involve structures with floor areas exceeding 60,000 feet, and mining and dwelling operations. The neutrality of the powerful forest products and electrical industries was assured by way of exemptions, making passage of the bill more likely.

its jurisdiction--approximately 50 percent of the state's land use districts, issues guidelines for those districts and receives applications for development permits within these areas. Under its mandate, the Commission is also expected to develop a comprehensive land use plan for the areas within its jurisdiction. The Regulation Commission differs, then, from the Environmental Improvement Commission not only in its jurisdiction, but also in its planning function.

Despite inadequate staffing and budget allocations, administration of the Maine land use control program is said to have been relatively effective in overseeing development. In part, this is due to the fact that the legislation has aroused public interest and support, particularly in reporting proposed developments. In addition, the regulatory bodies may have been assisted by general economic conditions which have not encouraged development. Major criticism leveled against the state program has focused on a failure implicit in the legislation itself to give adequate consideration to economic factors of development. It has been emphasized that while tourism and oil-related industries pose environmental threats, they also represent potential sources of funds to economically depressed areas. Further concern has been expressed that Commission actions are aggravating the state's housing shortage, forcing developers out and driving poor people into mobile homes. A major question for the future, then, is whether the state should expand existing programs into a more comprehensive system, dealing with major development programs in a broader conceptual planning framework.

New York (Adirondack Park area only)

The New York state constitution provides that the 2.6 million acres in New York's Forest Preserve "shall be forever kept as wild forest lands. They shall not be leased, sold, or exchanged, or be taken by any corporation, public or private, nor shall the timber therein be sold, removed, or destroyed." In 1971, the state legislature took advantage of this constitutionally mandated conservation zoning and established the Adirondack Park Agency and authorized it to prepare plans for all state and private lands with the Park.* Until the private land use and development plan was prepared, private development was to be controlled by a permit system.

The state land master plan became effective in 1972, the land use and development plan for private land, a year later. Each plan divides the relevant land into use categories and sets forth guidelines for the management of the land in each category. State lands are managed by the State Department of Environmental Conservation. The permit agency for private lands is the Adirondack Park Agency. Permits are required for all substantial development and in municipalities without approved local land use programs, for smaller developments as well. (The Plan is noteworthy in its emphasis on local planning. The Park Agency has authority to approve a local land use program and once approved, local review of certain projects is permitted; Agency permits are no longer needed.)

A second noteworthy aspect of the private land use plan is its use of intensity guidelines; that is, a standard of principal buildings per square

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*Forest preserve lands and private lands are interspersed, in a checkerboard pattern so that, in order to fully protect the integrity of the preserve, it was felt necessary to regulate private lands.

mile. The guidelines are capable of being very flexibly by both the Park Agency and local governments. Thus, the guidelines provide for sparse development in portions of the Park. Used in conjunction with the transfer of development rights*, the guidelines can be used to encourage cluster development resulting in highly developed pockets of land and large tracts of open lands.

Oregon

In 1973, the Oregon legislature passed a land use package which included Senate Bill 100 (the Oregon Land Use bill) as well as a subdivision review bill, a land development consumer protection bill(subsequently repealed), a bill aimed at retaining land in farm and open space uses (through tax deferrals and tax disincentives), two bills designed to improve local planning and a uniform building code. (Earlier Oregon had also passed several other bills dealing with specific environmental concerns). Developments leading up to the passage of the package included the organization by a freshman senator with the backing of the governor of a Land Use Policy Action Group composed of planners and governmental and private representatives, extensive public education and a three day land use planning conference convened by the governor. Two factors are cited as of particular importance in passage of the bill: a strong public commitment to environmental concerns and the governor's strong leadership.

Senate Bill 100 created a Land Conservation and Development Commission composed of seven members appointed by the governor. The Commission is re-

*Development rights might be transferred as a condition of receiving an Agency permit or in local zoning.

sponsible for establishing statewide planning goals and guidelines consistent with local and regional concerns, reviewing permit applications for activities of statewide significance, preparing land use inventories; reviewing plans of localities and state agencies for consistency with state goals; insuring citizen participation in the planning process;* preparing model zoning and subdivision ordinances; recommending to the state legislature areas of critical state concern. The Commission also has the power to appoint the director of the Land Conservation and Development Department and may use the staff of that agency to fulfill its responsibilities. A Joint Legislative Committee oversees both the Department and the Commission. Although the Commission exercises some planning functions, primary responsibility for state land use planning is placed at the local level. By a requirement that they coordinate all planning activities within their jurisdiction, county governments are in essence made regional planning bodies. Counties and cites are required to adopt comprehensive plans and to enact zoning, subdivision and other ordinances to implement their comprehensive plans. The Subdivision Review Act (Senate Bill 487) extends these requirements. It assures that land divisions will be consistent with the comprehensive plans developed under statewide goals. Similarly, the City and County Planning Commission Acts (House Bills 2965 and 2548) are extensions of S.B. 100, redefining the composition and duties of planning commissions, modifying the qualifications of planning commissions, and requiring compliance of proposed

*The legislature mandated the creation by the Commission of a State Citizens Involvement Advisory Committee. The Committee is expected to develop a program to achieve wide public participation in the formation of plans and guidelines.

developments with the comprehensive plan. If a county or municipality fails to meet its planning requirements under the land use bill, the Land Conservation and Development Department may assume the function and bill the local governments with its costs.

Vermont

During the sixties Vermont was subjected to increasing pressures from the second home market and ski resort booms. Rural areas felt significant inroads from new development, land prices soared, and farmers began to sell out in greater numbers than ever before. Existing communities had difficulty keeping up with increased service demands. The legislature responded in 1967 by broadening local authority to control land use and increasing the flexibility of zoning and planning commissions; state agencies also received broader powers. These measures did not prove adequate, however, and in 1969 the Governor established a Commission on Environmental Control. The Commission's recommendations provided the foundation for the Vermont Land Use and Development Plans Law (Act 250). Act 250 was accompanied by legislation dealing with such specific concerns as shoreland and flood plain zoning, dedication of open space, water pollution and mobile home park controls.

Act 250 recognizes two major functions, regulation and planning. The regulatory function is exercised by seven three-member district commissions which receive and decide on applications for development permits and by a nine-member Environmental Board which hears appeals from

district commission decisions.* The Board is also responsible for adopting state plans prepared by the State Planning Office within the governor's office: first an interim capability plan which is a catalogue of current land uses and capabilities; then a capability and development plan; and finally, a land use plan. A plan must be approved by the Governor and by the state legislature. The capability and development plan was approved in 1973. It built on the interim plan, attempting to refine guidelines to be used by state, regional and local agencies for planning and regulatory purposes; criteria outlined in the plan were incorporated into the amended version of Act 250 (June 1973). The final plan was submitted to the legislature in the spring of 1974. The proposed plan divided the state into five districts - urban, rural residential, agricultural conservation (prime agricultural land), resource and agricultural conservation (secondary agricultural and forest lands) and reserve - and establishes goals for each area consistent with the designated use as set forth in the capability plan.

The relationship between planning and regulation as envisioned in Act 250 is roughly as follows. In towns without permanent zoning and subdivision regulation, all commercial and industrial developments of more than one acre must be submitted to a district commission for approval. In towns with zoning and subdivision codes all developments involving more

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* Review functions are exercised by two additional bodies. The Agency 250 Review Committee, a committee composed of representatives of state departments prepares position papers for the district commissions regarding regulatory decisions the commissions must make. The Protection Division of the State Agency of Environmental Conservation notifies interested agencies of permit applications and passes on to the district commissions any significant responses.

than ten acres require commission approval. To receive a permit, a developer must demonstrate that his project conforms with the state plan and that the development will not have an undue adverse effect on air, water or soil quality, scenic beauty, or historical sites and that it will not place an undue burden on the community's ability to provide services.

How well the planning and regulating functions mesh, in fact, is in question. Act 250 relies on citizen administration rather than professional management; each district commission is composed of lay members. This arrangement appears consistent with Vermont's rural, town meeting, local government tradition. Planning under the Act is, on the other hand, a professional activity which takes place primarily at the state level. Regional administrative and planning bodies have relatively little opportunity for input into the state plan. There are no explicit provisions assuring local and regional planning agencies opportunities for planning assistance. Coordination guidelines are vague. Opportunities for political and policy conflict thus appear substantial.

An additional criticism which may be leveled at Act 250 is the lack of correlation between stated enviromental goals and the classifications of development made subject to the act. Classification of developments is based merely on acreage, not on type of development. It is not difficult to imagine projects smaller than one or ten acres which have a significant regional or environmental impact or large projects without such an impact. Further, exemptions under the act, while politically attractive, bear little relation to potential environment harm. Farming and forestry, for example, do not require permits while even the most primitive recreational development is subject to the Act. The state has at least for the moment stopped short of becoming the "environmental fortress" which its govenor envisioned.

One final point worth noting is that the permit system increases developer's costs. This is not, of course, unique to Vermont, but is inherent in any complex permit system. These costs appear to be substantial, however, and Vermont administrators have sought ways of simplifying application procedures.

Washington

Washington has passed several important pieces of legislature to control land use. Two of these - the Shoreline Management Act and the Termal Power Plant Siting Act deal with specific environmental problems, a third is more general. In 1971 the Washington legislature

established a state land planning commission to study the state's land use problems and to recommend to the legislature possible solutions. The commission produced House Bill 791, the Washington Land Use Bill which is expected to pass soon.

Under the Act, planning, zoning and subdivision control would be vested in local governments (except in those areas governed by the Shoreline Management, the thermal Power Plant Sigint Act or some other statute), provided that administrative actions and plans conform to criteria established by the Land Use Act and any state land use plan.

The state land use plan is to evolve out of a planning process mandated by the Act. The Act would establish a state land use planning agency within the governor's office to carry out state planning and to operate a land use information service. The state agency would also propose criteria for designating areas of statewide significance and developments of greater than local significance.
Provisions are made for citizen involvement in this process. Upon the governor's approval of the criteria, they would be incorporated into the state plan and specific areas of the state could be designated of critical concern or of greater than local impact. Once the state plan is adopted, the state agency would be required to review local and regional plans and order inconsistences with the state plan remedied. The state agency would have authority to review local regulation of areas of state wide significance and

developments of greater than local impact. In addition, the state agency would be authorized to participate in interstate planning activities. A five member state land appeals board would be authorized to review orders of the state agency, permits for development in specially designated areas and orders of regional planning officer. A standardized system of judicial review is also called for. To streamline the permit application and review process before regulatory agencies, the act calls for the establishment of a one-stop permit coordination system. To provide for immediate regulation of certain land uses prior to the adoption of state and local plans, interim land policies could be declared for plans and agricultural lands. The state also would be given emergency authority to regulate areas of statewide significance a greater than local impact.

III Implications for Massachusetts

Analysis of the experience of the states discussed indicates that state land use programs can be organized successfully in a number of different ways. Viewed as a whole, however, they suggest a number of common themes. States have concluded that they are unique and that no one program will work for all of them. Choices which a state makes in structuring a land use program reflect the history, traditions and special needs of each state, the way it is

organized to perform other functions, and the relationship of land use planning to other activities within the structure. Several states have used the ALI Model Code, but each has modified it to fill specific needs. Whatever the ultimate structure, areas of responsibility should be clearly delineated so as to avoid conflict. Specific provisions for inter-governmental cooperation are needed.

The Colorado and Oregon experiments are still relatively new and have a number of problems to work out. They suggest however, that land use control need not be a centralized, top down process. Where there is an existing or potentially operational local planning and regulatory framework, local governments offer significant contributions to state land use control. Perhaps the most important problem is one of accountability - that interests affected by land use decisions are accurately represented in one decision-making process. Placing responsibility for decision making at the local level is likely to encourage more substantial citizen participation since visibility will be heightened and issues highlighted. A comparison of the state programs, together with the San Francisco Bay Conservation and Development Commission experience suggests that programs operate effectively which profess specified, limited objectives. Issues may be clarified and visibility enhanced. Further, enactment of a land use legislation package need not be the final statement on the matter. "Comprehensive" legislation may later be

supplemented by statutes dealing with specific development or environmental problems. In several states, legislation has been passed in steps. The Colorado program is avowedly experimental.

Few states have explicitly sought to balance environmental protection with a positive program for growth and development. As its name might suggest, the San Francisco Bay Area Conservation and Development Commission made some efforts in this direction. However, should Massachusetts include an economic component in its legislation, it would be the first state to do so.

A matter little discussed in the individual case studies, but one deserving mention is the need for an improved land use data base. Land use planning at any level requires a wide range of information both quantitative and qualitative. Natural resource endowment, population statistics, economic activities and employment trends, environmental and social conditions, transportation, housing, and utility systems are areas in which up-to-date information is essential. A number of states have included data collection as part of the planning process, but few have pursued the goal of information management to the extent desirable. Indeed, a lack of adequate funding has forced officials in some states to rely on word-of-mouth estimates which have been far from accurate.

Massachusetts will have to come to grips with each of these issues for itself. But the experience in other states is definitely worth considering.

B. REVIEW OF LEGISLATIVE ISSUES IN LAND USE AND DEVELOPMENT PLANNING

SUMMARY
Of Staff Paper on
Legislative Issues in Land Use
and Development Planning

Planning is a means of shaping and not halting economic growth. This paper focuses on the various factors that ought to be taken into account in deciding what land use planning powers to delegate to what levels of government. Different views on the issue of delegation are considered. While the most appropriate strategy depends on the specific issues involved, the paper cautions against the delegation of powers that are so vague that they result in agency policies that are impossible to predict. Whenever possible, meaningful standards should be promulgated in whatever legislation is passed. In this paper, we also examine the administrative and financial capacities of the various levels of government to see whether or not they would be able to carry out the assignments that would be given to them under various land use planning strategies. Issues of economic externalities and citizen participation are also considered. Finally, there are remarks about the reform of middle-level government in the state.

REVIEW OF LEGISLATIVE ISSUES IN LAND USE AND DEVELOPMENT PLANNING

Comments on Legislation Pending Before the General Court

By Joel F. Brenner

March 1975

It is impossible to produce useful legislation unless its sponsors and drafters ask themselves precisely what it is that they want to accomplish. What sort of government intervention is wanted? What will it achieve? Why do it at all? Unless these questions are raised, and unless a fairly concrete consensus about the answers is reached within the General Court itself, then it is safe to predict that even if legislation is passed it is unlikely to accomplish much except to increase the size of the budget and the bureaucracy. A survey of the current crop of bills relating to land and development planning suggests that this sort of hard thinking has yet to go on in more than a few heads.

One issue must be cleared up at the outset. Planning means planning for development. Conservation is but one of the planner's concerns; and in fact conservation does not

necessarily imply planning. There may be irrational conservation just as there may be irrational development. The point is vital. For if in a time of economic slump the opponents of rational planning are able to portray the enterprise as inimical to economic development, then planning legislation will never get out of committee. Already the misconception has spread too far. At hearings recently on various bills whose purpose was to promote economic growth in Massachusetts, one gentleman was heard to mutter, "I don't know why they need a development bank; they've already got all these conservation laws." The advocates of planning must not allow themselves to be tarred with this brush. Society is not an electrical appliance whose growth can be stopped by pulling out the plug. A society through its institutions can regulate, condition, and control its growth, but a society cannot stop or start growth by passing a law. It is precisely because there will be growth that planning is needed. The legislator's task is to ensure that it takes place in a rational fashion.

I. THE DELEGATION ISSUE

A. Kinds of Planning

The "planning" rubric covers two related but different ideas. On the one hand it includes substantive decision-

making to regulate the location of activities and the use of land. Planning in this sense implies affirmative decisions, embodied in a "master" or "comprehensive" plan, that certain uses (such as roads, schools, subway stations) shall be located according to plan. And it also implies negative, restrictive decisions that certain uses may not locate in specified areas, indicated on a zoning map for example. On the other hand, "planning" also includes the organization of the decision-making process and procedures, as opposed to substantive decisions about what shall or shall not be located in various places. The state's zoning enabling act,[1] for instance, has nothing whatever to say about the location of gasoline stations or funeral parlors in Worcester or Acton or anyplace else. Rather, it authorizes that local boards be constituted which are granted the power, within the rather broad limits, to make these and other decisions.

Planners refer to this distinction as the difference between plan and process. By plan is meant substance. By process is meant procedure, or governmental structure. The distinction is an essential one, but it also obscures an important truth. If it aims to accomplish anything, any legislative scheme must at some level embody substantive criteria. The issue for the statutory draftsman, therefore, is whether and to what extent the legislature shall determine the criteria; whether and to what extent that power shall be delegated.

Failure to grapple with this issue is one of the evident and lamentable characteristics of much of the planning and development legislation presently in committee. The structure of many of these bills may be fairly caricatured as follows: (1) establishlish a commission; (2) give it plenty of money; (3) confer on it all power necessary to accomplish its goals (which are too vague to mean anything); (4) kiss it good-bye. This is a prescription for little more than misspent dollars and governmental arterial sclerosis.

B. What Powers to Delegate?

How, then, should a legislator decide what powers to delegate?

It is sometimes said that the press of legislative business, the lure of administrative expertise and flexibility, and the inability to achieve legislative consensus make precise delegation impossible. The conclusion is that the natures of the legislative and administrative processes preclude anything but broad, sweeping delegations from legislature to agency.[2]

The need for flexibility of administration is indeed a primary rationale for the creation of administrative agencies. If we need the agency at all, it is pretty clear that it must have considerable discretion in deciding how to go about its business. Failure to delegate this kind of

flexibility would only guarantee administrative rigor mortis right from the start. But it is one thing to argue that an agency requires flexibility to decide what day-to-day means of operation are best calculated to achieve prescribed goals, and quite another thing to argue that the agency itself ought to remain free to prescribe its own goals. That is a prerogative that the legislature should jealously refuse to part with. It is the prerogative to make political decisions - decisions regarding the direction of the government and the society, decisions drawing a balance among competing interest groups in the electorate. Only by keeping a tight fist on this level of decision-making power does the legislature vindicate the principle that political decisions should be made by elected officials accountable to a constituency.

The argument from "expertise" is a similar mixture of sense and confusion. If what is meant is that the agency personnel will create a terrible muddle if they don't know a great deal about the market or industry to be regulated, then that is of course true. But if what is meant is that political decisions can be reduced to technical issues that are amenable to "scientific" solutions by value-free "experts," then this is foolishness. Perhaps it will help to put the "expertise" argument in perspective by recalling that it was strongly advanced in favor of creating both the

Interstate Commerce Commission and the Civil Aeronautics Board -- two agencies that currently bask in ignominious disrepute. To police an industry, to regulate a land market, to inject capital into depressed areas: these decisions benefit some groups and are detrimental to others. One does or does not take these decisions according to an impressionistic sense of the relative weight of the costs and the benefits, and against a background of social consensus and constitutional values. But one way or another, such decisions are unavoidably political, and they belong with the legislature.

The final argument in favor of sweeping delegations is that the legislature cannot achieve a policy consensus, whereas an agency can and will. Therefore, the agency must have power to formulate goals. But "It does not make sense," as Professor Jaffe says[3] in the federal context,

> to say that the burdens of the congressional workload and the pressure exerted by opposing political forces preclude a detailed legislative solution to a given problem, so that vague, general delegation is the better or the only alternative. The monumental detail of the tax code suggests that Congress can, and does, legislate with great specificity when it regards a matter as sufficiently important. Nor can a political conflict be avoided by relegating a problem to the care of an agency and invoking the talisman of "expertise." The effect of such a transfer of function is simply to shift the legislative process to a different level, and there is no reason to believe that the agency will be able to rise above power conflicts to achieve solutions that the legislature itself cannot or does not choose to provide. [emphasis added]

The common symptom of bureaucratic ineffectuality is not the result of agency failure to carry out broad mandates imaginatively. Rather, it is the result of agencies' carrying out vague mandates precisely and thus producing vague policies.

C. How Bills Measure Up

Here is how some of the important bills now in committee measure up to the clarity of delegation standard.

There are three schemes for statewide, regionally supervised controls over critical and/or regional land use developments that make impressive efforts in this direction,[4] but which have little or no chance of enactment.

There are two schemes that would give the state a substantive planning role, but they avoid substantive judgments and standards.[5]

There are four schemes for development or land banks.[6] Their authors prefer broad mandates and imprecise criteria.

D. Drafting Procedure: Essential Questions

There are certain issues that no one should fail to put to himself in the course of drafting a bill:

(1) Define as precisely as possible - define concretely - the outcomes that the legislation should

prevent or encourage. Point to them, Describe them. Inability to do this should suggest that further effort will be a waste of time.

(2) Sketch the structure and key points of a bill that might attain the desired ends.

(3) Imagine how the scheme might go haywire. What kind of maladministration might lead to bad results? What usurpations could occur? What wrong judgments may be made that are within the agency's powers? One can never foresee them all, but an imaginative draftsman should be able to devise a pretty long list. This is a crucial and difficult stage of the drafting. It was omitted by the draftsmen and sponsors of many of the bills under discussion. And it shows.

(4) Redraft the bill to preclude as many bad results as possible.

At this point tough judgments must be made. Many bad results can never be precluded by the legislature: Agency personnel or a governor who are hostile to the scheme, for example, can always scuttle it. And specificity of delegation may in some cases be achieved only by limiting the agency's discretion to an intolerable degree. Or it may be that legislative maneuvering necessitates leaving a matter vague. In that event one must decide either that the "right" sort of agency personnel will produce the desired results anyway (or not). Or that litigation will

achieve the same thing (or not). Or else that the scheme as it could be passed would be so muddled that it would not be worthwhile.

Broad delegations may indeed be necessary. The mistake is to assume that they are necessary without in every case having thought the matter through.

II. DELEGATION TO WHAT LEVEL OF GOVERNMENT?

This is a key issue in land use planning, and one that is still wide open in Massachusetts. At present the limited controls that exist are grouped at the local level in the form of zoning boards, boards of health, and planning boards. Some planning capacity exists in the regional planning authorities, but the plans produced are honored more in the breach than the observance. There is no general planning capacity at the state level. It is a safe bet that the localities will hang on to a substantial amount of their power. But what happens when local policies conflict? Should there be a forum to resolve such conflicts at the regional or state level? Some proposed legislation suggests that certain powers, while remaining at the local level, may nevertheless be subjected to stricter standards and perhaps to regional supervision(which could in turn be subjected to a statewide

comprehensive plan). Proponents of reforms in this area will clearly have to buck strong local resistance to any change, and that resistance will condition any legislative bargain that may be made. But legislators in reaching their bargains will still want to ask themselves: What outcome would be ideal? These are the three issues to consider:

(1) citizen participation (tending to keep government at a low level)

(2) externalities (tending to push government to higher levels)

(3) governmental capacity (which depends on the specific case)

A. Citizen Participation

Planning, as we noted, is a loose term that covers various kinds of governmental intervention and direction. The nature of this intervention will vary according to the philosophies of and the economic and political restraints upon the policy-maker. Some plans will merely establish basic frameworks within which a range of free-market decisions may occur, while others will be far more detailed. But the essential feature of any planning is that it limits future decision-making. Even if it is merely a "boundary" within which relatively free decisions are permitted, the nature of a boundary is that it excludes as well as includes. There is therefore an inherent conflict between the principle

of planning and the principle that citizens should be left free to control their own lives.

Few persons would hold that a society cannot exercise some control over the actions of its individual members where the good of the whole demands it. Indeed, the criminal law itself depends on a society's ability to do so. Non-criminal restraints rest on the same justification: citizens must use their property only in ways that do not do injury to their neighbors and to wider social interests. Reluctance to impose restraints on individual choice nevertheless remains great, and this is rightly so. The balance to be drawn is thus a delicate one. If the politician takes the principles seriously, then before he creates another government job, before he gives another bureaucrat another ounce of power, before he subjects another citizen to another form in triplicate, he must scrutinize every proposal - and not merely in a casual way - and determine that it justifies itself and is more likely to work than not. If the intervention does justify itself, then control of the decision-making machinery should be left with the governmental level to which citizens have the greatest access, consistent with feasibility. And the decisions should be made openly.[7]

B. Externalities

"Externalities" is the economist's word for the costs

that are not borne and the benefits that are not recouped by the activity that creates them. A new factory, for example, creates external benefits for local merchants by raising the level of disposable income among the working population who patronize the merchants' stores. The same factory creates external costs (or "diseconomies") in the form of pollution which it does not clean up, and in the form of any municipal services such as sewerage and roads for which it may not pay its full share. Similarly, if the working population drawn to the factory is young and includes school-age children, new schools may have to be built and staffed by the city or town. This, too, is an external diseconomy created by the factory.

Note that the externality is not the effect itself, but the fact that the creator of the effect does not get to keep it, or does not have to pay for it. The cost or benefit, in other words, is external to the activity that creates it. Governments as well as firms create externalities.

A classic instance of government-created externalities is the pollution of the Delaware River. This river has its headwaters in southern New York and forms the eastern boundary of New Jersey. By the time it reaches Trenton in southern New Jersey it is not exactly pristine. Trenton then dumps its sewage into the river (below the town, of

course), so that when the water has reached Philadelphia a few miles farther south it is pretty foul. Philadelphia then dumps its sewage into the Delaware, so that by the time the river reaches Wilmington it is in a truly wretched state. And when Wilmington and DuPont have finished dumping their mess into the river, it is no small wonder that even the ocean will have anything to do with it. Now if the citizens of Trenton had to pay what Philadelphians have to pay in order to use the water after the citizens of Trenton have done with it; and if Philadelphians had to pay what the people in Wilmington have to pay in order to be able to use the water after it passes Philadelphia; and if the citizens of Wilmington had to pay the cost to us all of having a fouled ocean, then the chances are that they would all behave differently. This is an externality. It would be eliminated if the sewerage systems of all three cities were controlled by a single jurisdiction.

The principle gleaned from this and similar situations is that the unit of government should be large enough so that the costs and benefits of its actions are consumed within its borders.

Clearly this is not always possible or even desirable. Rather than redraw the maps of three states, Trenton, Philadelphia, and Wilmington may reach some kind of accord about dumping sewage. Or the federal government - the only unit large enough to encompass most of the costs - may step

into the picture. If externalities were our only concern, all jurisdictions would become very large very fast. Moreover, they would be unstable because different activities would dictate differing jurisdictional limits. Obviously, we have not got hold of a principle that will solve all our problems. But we do have an important guideline to help us in the rational administration of government.

C. Capacity

The unit of government to which power is delegated must have the financial and administrative capacity to perform the task assigned. As between two or more units that have adequate capacity, the delegation should go to the one that can perform most efficiently.

The state government, of course, has the greatest financial capacity, and it also has the legal capacity to administer most any scheme. Efficiency is another matter. The state bureaucracy is cumbersome and is characterized by continuing jurisdictional disputes among the various departments. Possibly the bickering would be reduced if there were a cabinet level agency with planning capability, but such an office does not now exist (though the governor has declared his intention to create one).

If general policy decisions about land use and develop-

ment planning are to be made, the state seems the right level at which to make them (though policy may be administered at a lower level). It may also be the right level at which to coordinate certain specific, macro-economic decisions such as the optimal siting of new industry that may be induced to come to the state. But the state is clearly the wrong level at which to make decisions about the proper location of funeral parlors in Chicopee. Such decisions should continue to be made at the municipal level. But municipalities also have far less administrative capacity and planning expertise, especially the smaller ones. And while they are optimal from the points of view of citizen participation and availability of information about local conditions,[8] their very closeness to the persons and land to be regulated makes them subject to political pressures that are often very great. The widespread, improper granting of zoning variances and special permits, for example, is notorious. (This situation would be eliminated by the proposed revision of G.L. c. 40A, H. 5457.)

The county is an ancient unit of government, but the institution has long been in ill health and last rites have indeed been proposed (H. 3072 would abolish county government). The fourteen counties - perhaps Franklin County is an exception- perform few functions that could not be handled as well if divided between the state and municipalities, and their abolition

would not require constitutional amendment. At present, however, county reform legislation has no chance of enactment.

The weakened state of county government poses a serious obstacle to planning legislation. For, while the counties are but a shadow of a government, the regional (i.e., county size) unit would be ideal for the administration of many policies. It is large enough to contain most externalities. It is small enough to be accessible to citizens. And regional government could be used to far better advantage than state government for the supervision of policies that are best carried out locally. For example, regional government could be vested with power to settle disputes and policy inconsistencies between municipalities; to ensure that local codes comport with general state guidelines; and perhaps to grant zoning exemptions if it is feared that municipalities cannot be trusted.[9]

Logically, nothing prevents the establishment of regional governmental units alongside the county system and some moves in this direction can be expected. Regional planning authorities suggest themselves as a focus of attention.[10] However, the State's twelve RPA's have almost no political or financial power. And as a practical matter a set of parallel governments could become an organizational

nightmare. It is difficult to imagine effective middle-level government apart from either the abolition or overhaul of the county system.

III. GOVERNMENTAL REFORM

Modern government is frequently likened to a great behemoth. But the metaphor contains only half a truth; for below the state level one leaves the behemoth behind and enters, like Gulliver, the land of the Lilliputians, where all the local governments live. The little bodies are everywhere. They will tie you down, walk all over your good ideas, and make speeches from the end of your nose.

Counties are only part of the problem. In Massachusetts today there are over 300 special-purpose governmental units apart from municipalities.[11]

Most of these special districts perform really essential functions. The problem is that they are usually politically unaccountable; that their jurisdictions are bewildering; and that they frequently follow uncoordinated and sometimes contradictory policies.

Special districts became popular in the 'thirties because they offered a way to evade constitutional debt limits. They also seemed to offer a way to take "politics" out of government, which could then be run by experts. And

in those few areas where general purpose units were willing to relinquish jurisdiction, special districts could achieve orderly coordination of services among cities and towns in a way that the municipalities alone could not do. Many of them proved to be useful, fruitful experiments, and for a long time they looked like the epitome of rational government. Yet precisely because they were successful, they multiplied until now they represent balkanized administration, and the difficulty of coordinating these units is very great.

Ironically, planners and environmentalists have themselves been a source of pressure for the further proliferation of special-purpose units. Every new act, however desirable its program may be, creates a new bureaucracy that is probably "within" the department of something or other but without being subject to it. Every such program has a cost. At present a developer - in addition to a multitude of local utility permit standards - has a substantial compliance problem in the form of the subdivision law,[12] the Wetlands Act,[13] and the Massachusetts Environmental Policy Act.[14] Also he may have certain federal laws to worry about.[15] And he may in addition have a zoning problem. On top of these are now proposed a number of regional land control schemes that each has its notice, hearing, and compliance requirements. Now I am not challenging the substance of any of these regulations. What I am saying is that the cost of regulation is reaching the point where even the best

regulation may become counter-productive. The wisest plan, authorized by the most enlightened legislature, administered by the most skillful planners, and enjoying widespread public support is likely to produce undesirable or at best negligible results if it is merely nailed to the top of the present bureaucracy. The Anti-Snob Zoning Act[16] is a case in point. Less than a hundred dwelling units have been built as a result of this law. And the explanation has nothing whatever to do with the substance of the law itself. Rather, it is simply too costly for a low-income housing developer - whose costs are already heavily front-loaded - to jump through all the procedural and judicial hoops.

There is frankly little or nothing that can be done to short-circuit the appeal process under this or other acts. To do so would violate parties' rights to constitutional due process of law. But there is much that can be done to streamline the permit-granting process and thereby to consolidate all or most appeals. This would save time and money, and would raise little if any opposition. Accordingly, a bill to devise a "one stop shopping" or "all-in-one" development permit should be a high priority item.[17]

Governmental reform in general should also receive more attention. Though few subjects inspire stauncher resistance among the ranks of the government itself, the present time is unusually propitious for organizing around the issue, because the economic and social costs of ineffi-

ciency are especially intolerable during a recession. In prosperous times, ineffectual and costly county government may be a pain in the neck; when the human services budget is being cut, it is a scandal. When there is no housing shortage, construction delays are of no special interest. But when there is a shortage, the further bureaucratization of the permit process is perverse. Thus it seems to me impossible to evaluate legislation for land and development planning apart from considerations of governmental reform. Indeed, such reform could be the very issue around which to organize. And I hardly need add that reform of the permit review process is the most promising political bargain area for dealing with the opposition of the development industry to regional planning.

NOTES TO TEXT

[1] G.L. c. 40A.

[2] This view is advocated by K. Davis, Administrative Law Treatise at 98-99 (1958), 46-50 (Supp. 1970).

[3] L. Jaffe, "The Illusion of the Ideal Administration," 86 Harvard L. Rev. 1183, 1189,90.

[4] House Bills 644, 3907, 808, 2553 (the last two are identical).

[5] House Bills 647, 1734.

[6] Senate Bills 1008, 1604; House Bills 2797, 3795.

[7] See House Bill 2799.

[8] See House Bills 460, 814.

[9] The proposed revision of G.L. 40A, H. 5457, takes a step in this direction. See s. 14(2): zoning boards of appeals would hear and determine applications for special permits. By s. 10, use variances would be eliminated altogether.

[10] See A. Aylward, "The Role of Regional Planning Agencies and Middle-Level Government in Land Use Decision Making in Massachusetts," 1973 (unpublished paper, Massachusetts Institute of Technology, Department of Urban Studies and Planning).

[11] Ibid., p. 2.

[12] G.L. c. 41, ss. 81K-81GG.

[13] G.L. c. 130, s. 105; c. 131, ss. 40, 40A.

[14] G.L. c. 30, ss. 61-62.

[15] National Environmental Policy Act, 42 U.S.C. ss. 4331-35, 4341-47 (1970).

[16] G.L. c. 40B, ss. 20-23.

[17] See Senate Bill 1616.

APPENDIX A

BILLS BY CATEGORY

Proposed legislation dealing directly or indirectly with land use and development planning is divided into the following categories:

1) state and regional planning per se;
2) regarding economic development;
3) regulation of local authorities and their planning powers;
4) conservation and local improvements;
5) publicly held real estate and easements;
6) governmental organization; and
7) taxation.

I. STATE AND LOCAL PLANNING

A. Statewide schemes for planning or regional regulation

H. 644 Wetmore. Regulating developments of regional impact. Nat. Res. & Ag.

One of several bills to create a land use regulatory system above the local level. All these bills are the conceptual off-spring of the American Law Institute's model and the Martha's Vineyard Act (Laws of 1974, c. 637), though they vary in substantial as well as in technical aspects. This one regulates developments of regional impact but not areas of critical planning concern.

A "development of regional impact" as use-in these bills is one that will affect more than one municipality in substantial ways. An "area of critical planning concern" is one whose uncontrolled development would have serious and irreversible adverse affects on certain resources, as defined in the bills.

H. 644 is particularly noteworthy for its tough procedures (ss. E.-K.), which deserve careful consideration.

The bill ostensibly leaves much power at the local level, but various built-in incentives as well as the appeal structure would in fact result in power's being transfered to state and region. An executive commission is created to devise guidelines for regional impact development within which regional planning authorities must promulgate regulations. Developments of regional impact submitted to local authorities for approval must comply with these regulations. Appeals from local decisions to the commission are allowed.

H. 647 Wetmore. Directing secretary of environmental affairs to prepare a comprehensive land use plan for the Commonwealth. Nat. Res. & Ag.

The only such legislation proposed. But see also H. 1734.

H. 1967 Flaherty. Amending the environmental impact law. Nat. Res. & Ag.

H. 3907 Hatch, Ames, Gannett, Gray, Healy, Robinson, Gillette, Sprague, Saltonstall. To protect water and land in areas of the Commonwealth. Nat. Res. & Ag.

Another of the progeny of the Martha's Vineyard Act, this bill would regulate areas of critical planning concern and developments of regional impact. The key government level is regional, but county government is nowhere concerned, and regional planning agencies have a policy input, at least indirectly. Great power would be left at the local level, however (s. 5(3)), and development guidelines may vary among regions.

H. 808 Dwinell. To establish a state land use program.

H. 2553 Walker. Same bill. Nat. Res. & Ag.

This bill would also regulate districts of critical planning concern and developments of regional impact. It is essentially an application of the Vineyard Act to the entire state, with two differences: (1) there would be no moratorium on development pending organization of the legislative machinery, and (2) instead of a statewide commission, there would be a regional commission within each county.

Like the Vineyard Act, this bill suffers from a serious procedural ambiguity. By ss. 13 and 16 (ss. 14 and 17 of the Vineyard Act), it may be argued that the commission's power to determine whether a development is one of regional impact can be triggered only by the municipality of site, and not by neighboring municipalities or the commission. This is odd, since local and regional interests may differ. Such a procedure could render pointless the guidelines governing developments of regional impact.

H. 1734 Landry, Bresnick. Comprehensive land use planning. Nat. Res. & Ag.

Would create a system of state, regional, and local land use and planning agencies whose powers, procedures, and regional definition are not perfectly clear.

B. Wetlands and coastal areas

S. 1018 Atkins, McKinnon. Protection of coastal wetlands.

S. 1043 Locke. Same bill. Nat. Res. & Ag.

Forbids "construction in coastal wetlands of access driveways to unrestricted land, except upon an elevated structure bridging the wetland, permitting the unobstructed flow of the tide and preserving the natural contour of the wetland."

S. 1051 MacKenzie, Howe. Enforcement of laws regulating wetlands. Nat. Res. & Ag.

"Boards of health in cities and towns may, in the case of violations of this section [re removal, fill, dredging, or altering of land bordering waters, G.L. c. 131, s. 40], attach or place a lien on any property subject to the provisions of this section, may require the correction or alteration of any filling or other activity done in violation of this section, and may require payment for damage done by any such violation."

S. 1053 McCarthy. Protection of wetlands. Nat. Res. & Ag.

S. 1071 Saltonstall, Bulger, Aylmer. Re the use, protection, and development of coastal zone resources.

Would establish an executive office with jurisdiction over these resources.

H. 815 Walker. To establish a division of coastal zone management.

H. 959 Lane, Silva. Same bill. Nat. Res. & Ag.

Abolishes the division of mineral resources and creates a division of coastal zone

management, which would have great powers in the area "seaward for 200 miles and inland to the point where significant marine influences exist." A comprehensive, enforceable plan for this area is to be prepared. There are no statutory criteria that the plan must meet.

The bill raises many unanswered questions. To what extent is local authority infringed? Is zoning override implied? How is the plan to be enforced? Is it binding on local government, or is it a separate system of rules that may or may not coincide with local ones? Territorial jurisdiction is extremely vague.

II. ECONOMIC DEVELOPMENT

S. 1008 Parker. Revising enabling legislation of SE Regional Planning and Economic Development District. Local Affairs.

S. 1604 McKinnon, Tully, Olver. Creating Mass. Community Development Finance Corp. Urban Affairs.

Aiming to alleviate economic depression, the bill erects a two-tiered structure: a state community development finance corporation (CDFC) in the executive branch, and a series of self-organizing community development corporations. The latter are to be popularly created and define their own geographical boundaries. Their duties, powers, and relationship to the CDFC are rather unclear. The CDFC is to have great financial resources and broad discretionary authority unguided or limited by any legislatively imposed standards.

H. 1616 Timilty. Re comprehensive development permits. Urban Affairs.

H. 2797 King, Goode. Establishing development corporation for Boston's SW corridor. Urban Affairs.

H. 3795 Bartley, Lapointe, Bulger, Scalli, Bernashe, Demers, Goode, Kendall, Lappin, Newman, Quigley, Coffey. Establishing a base conversion land bank. Commerce & Labor.

Would create a development and land bank with jurisdiction (only) over federal installations now being abandoned, such as the Boston Navy Yard. The bank would plan development in these depressed areas (and is in this respect unique among these four bills) and would provide seed-money investment capital where necessary from funds raised by bond sales. Like other pro-development legislation, this bill (s. 6) makes a broad delegation of great power.

III. LOCAL AUTHORITIES AND THEIR PLANNING POWERS (including housing and mortgages)

A. Zoning

H. 5457 Zeiser, Brett, Gray, Harrington. Revising zoning enabling act. Urban Affairs. (Formerly H. 525)

Among the bills likely to pass, this one is most important. It entirely rewrites the zoning enabling act, G.L. c. 40A. In addition to technical changes of varying importance, it expands the purposes of zoning to include the encouragement of "housing for persons of all income levels," and it directs that local authorities at least consider any master or comprehensive plan applying to their area (s. 2). The importance of these clauses will depend on the interpretation they receive by the courts. The

bill would also eliminate all use variances (s. 10) and would reduce the freeze on laws relating to subdivision plans from 7 to 5 years (s. 6). But section 6 would not alter the result of Bellows Farms, Inc. v. Building Inspector of Acton (1973), 303 N.E. 2d 728. By section 14(2), special permit applications would be heard by boards of appeals.

S. 1571 Hall. Allowing use of land for purpose for which zoned. Urban Affairs.

The effect of this bill would seem to be the elimination of all restrictions except use restrictions created by the zoning laws. It would probably also result in less effective policing of zoning laws.

H. 1836 Sprague. Re zoning of lands subject to flood. Urban Affairs.

Would make certain changes in the zoning enabling act's provision on flooding, G.L. c. 40A, s. 2. The Supreme Judicial Court has probably already accomplished these changes. See Turnpike Realty Co., Inc. v. Dedham, 72 Mass. 1303 (1972).

S. 1546 Aylmer. Requiring on-site inspection before hearings by zoning boards of appeal. Urban Affairs.

"No hearing shall be scheduled on a petition for a variance until the board of appeals has conducted an on-site inspection of the property for which a variance is petitioned and all the members of said board have signed an affidavit thereto."

If adopted, this language could easily be construed to allow inspection by an agent of the

board, or by one of its members.

S. 1547 Aylmer. Eliminating notice to abutters for certain zoning hearings. Urban Affairs.

Would eliminate special notice to abutters of proposed zoning changes and variances.

If this bill is designed to solve the onerous notice problems created where a highway or railway right of way is involved, narrower language would suffice.

H. 1029 Wilber. Defining zoning procedures. Urban Affairs.

Would stay certain zoning exemptions pending litigation. Would construe municipal failure to act on applications for variances or special permits as grants thereof.

B. Planning Districts

S. 60 Olver. Relative to Franklin County Regional Housing Authority. Counties.

S. 140 Foley. Re definition of planning districts. Local Affairs.

Power to define regional planning regions removed from the division of planning of the department of commerce and development, and placed in the bureau of regional planning, department of community affairs.

S. 141 Kelly. Authority of district planning commissions to undertake to plan solid waste acilities. Nat. Res. & Ag.

S. 1011 Schlosstein. Changes in financial section of regional planning law. Local Affairs.

C. Solid waste disposal

S. 144 Foley. Authorizing and funding central Mass. regional planning comm'n to plan solid waste facilities. Nat. Res. & Ag.

S. 1034 DiCarlo. Establishing Commonwealth regional solid waste comm'n. Nat. Res. & Ag.

S. 1035 DiCarlo. Establishing regional solid waste disposal districts. Nat. Res. & Ag.

S. 1035 authorizes cities and towns to join together in regional solid waste disposal districts, with power to run appropriate facilities. S. 1034 creates another special purpose executive commission to encourage solid waste disposal planning and having broad power to make grants to regional solid waste disposal districts. Funds for grants would come from bond sales.

D. Miscellaneous (including subdivisions)

S. 1561 Burke, Sprague. Regulating approval of definitive subdivision plans. Urban Affairs.

H. 722 Chmura. Re subdivision control law. Urban Affairs.

H. 5378 Urban Affairs Committee. Revision of subdivision control law. Urban Affairs.

Chances of favorable action in this session on any revisions of the subdivision control law are poor, primarily because the Urban Affairs Committee has been preoccupied with its revision of G.L. 40A. See H. 5457. The outlook for next session is better.

H. 1021 Scaccia. Withholding school assistance from certain cities and towns (re housing). Urban Affairs.

H. 1022 Scaccia. Withholding aid from cities and towns that exclude low or moderate income housing. Urban Affairs.

H. 2799 King, Fortes. Re citizen participation. Urban Affairs.

Would direct the Department of Community

Affairs to issue mandatory regulations governing citizen participation and availability of public information when municipalities apply for certain federal grants.

H. 2831 Fantasia. Permitting MHFA to guarantee agricultural loans. Urban Affairs.

IV. CONSERVATION AND LOCAL IMPROVEMENTS

A. Conservation and preservation

S. 1025 Backman, Cusack, McGrath, Businger, Segal, Harrington. To create Charles R. Conservancy District, Nat. Res. & Ag.

To create a conservancy district and commission for the Charles R. watershed. The powers of the commission are educational and investigatory, and include a mandate to draft legislation.

S. 1039 Hall. Wildlife sanctuary at Shirley Industrial School. Nat. Res. & Ag.

H. 1622 Brett, Timilty. Neponset R. Recreation; acquiring land for. Urban Affairs.

H. 3905 Ames. Clarifying the conservation restriction law. Nat. Res. & Ag.

B. Local improvements

S. 1029 Bulger. Making irrevocable certain licenses relating to tidelands in South Bay, Boston. Nat. Res. & Ag.

S. 1045 LoPresti. Making irrevocable certain licenses relating to tidelands in East Boston. Nat. Res. & Ag.

V. PUBLICLY HELD REAL ESTATE AND EASEMENTS

H. 460 Dwinell. Directing inventories of public rights of way to shore.

H. 814 Walker. Same bill. Nat. Res. & Ag.

Municipalities directed to prepare a list of public rights of way leading to the shore line within their boundaries, and to indicate same by signs. The state would compile the lists.

H. 3909 McGee, Quinn. Requiring a review of public lands held for natural resource purposes. Nat. Res. & Ag.

S. 1311 Atkins. To provide for disposal of Commonwealth's surplus real property. State administration.

VI. GOVERNMENTAL ORGANIZATION

H. 3046 Frank. To establish a Metropolitan Council. Urban Affairs.

Transforms the MAPC into a Metro Council that would be a limited form of regional government.

H. 3072 Frank. Establishing regional government, abolishing county government, and redefining local government functions. Counties.

VII. TAXATION

(All bills in the taxation committee)

A. Constitutional amendments allowing differential taxation of real estate according to use

S. 42	Timilty
S. 1443	Saltonstall
S. 1476	Tobin
H. 1597	Brownell, Cerasoli
H. 3766	Kearney, Connolly
H. 3950	Howe, Chisholm
H. 4328	Pines

B. Other constitutional amendments affecting differential real estate taxation

S. 1381 Boverini. Requiring General Court to fix a maximum tax rate for owner-occupied residential real property.

S. 1418 MacKenzie. Affecting wetlands valuation.

H. 3951 McGee, Walker, Young. Re taxation of wild or forest lands, open spaces, natural resources, and property devoted to recreational uses.

C. Legislation to affect uniform real estate taxation

H. 5398 Melia. To allow assessors to employ different methods in determining full fair cash value of property.

S. 1440 Olver. Amending the agricultural and horticultural assessment act.

S. 1461 Schlosstein, McCarthy. Amending the agricultural and horticultural assessment act.

S. 1490 Zarod. Limiting the value limitation on classified forest land.

D. Other taxation legislation

S. 194 Foley. To repeal property tax exemption of public housing, and to have such taxes assumed by the state and federal government.

S. 1373 Aylmer, O'Neill, Wilbur. Further defining assessment of land under conservation restriction.

H. 509 Rourke. Exempting from property tax property no longer used for parking under EPA order.

H. 999 Lappin. Providing for income tax deduction to corporations located in high unemployment areas.

H. 1225 Buglione. Providing for taxation of certain solid waste disposal facilities and resource recovery facilities.

H. 3405 Scaccia. For partial reimbursement of cities and towns for revenue lost due to property tax exemptions.

H. 4160 Lappin. Revaluation of property owned or leased by urban development corporations.

H. 4310 Buell, Rockwell. Re taxation of solid waste treatment facilities.

APPENDIX B

BILLS BY NUMBER*

Senate Bill No.	Sponsor(s), Abbreviated Title, Committee
60	Olver. Re Franklin County Regional Housing Authority. Counties.
140	Foley. Re definition of planning districts. Local Affairs.
141	Kelly. Authority of district planning comm'ns to undertake technical planning assistance. Local Affairs.
144	Foley. Authorizing and funding the central Mass. regional planning comm'n to provide solid waste facilities for Worcester and 39 adjacent towns. Nat. Res. & Ag.
1008	Parker. Revising enabling legislation of SE regional planning and economic development district. Local Affairs.
1011	Schlosstein. Changes in financial section of the regional planning law. Local Affairs.
1018	Atkins, McKinnon. Protection of coastal wetlands. Nat. Res. & Ag. Same as 1043.
1025	Backman, Cusack, McGrath, Businger, Segal, Harrington. To create Charles R. conservancy district. Nat. Res. & Ag.
1029	Bulger. Making irrevocable certain licenses relating to tidelands in South Bay, Boston. Nat. Res. & Ag.
1034	DiCarlo. Establishing Commonwealth regional solid waste comm'n. Nat. Res. & Ag.
1035	DiCarlo. Establishing regional solid waste disposal districts. Nat. Res. & Ag.
1039	Hall. Wildlife sanctuary at Shirley Industrial School. Nat. Res. & Ag.

*Excepting bills relating to taxation, which will be found in Appendix A, part 7.

Senate Bill No.	Sponsor(s), Abbreviated Title, Committee
1043	Locke. Protection of coastal wetlands. Nat. Res. & Ag. Same as 1018.
1045	LoPresti. Making irrevocable certain licenses relating to tidelands in East Boston. Nat. Res. & Ag.
1051	MacKenzie, Howe. Enforcement of laws regulating wetlands. Nat. Res. & Ag.
1053	McCarthy. Protection of wetlands. Nat. Res. & Ag.
1071	Saltonstall, Bulger. Aylmer. Re the use, protection, and development of coastal zone resources. Nat. Res. & Ag.
1311	Atkins. To provide for disposal of Commonwealth's surplus real property. State Administration.
1443	Saltonstall. Constitutional amendment re taxation of wild or forest lands, open spaces, etc. Taxation. Same as H. 3961.
1546	Aylmer. Requiring on-site inspection before hearings by zoning boards of appeal. Urban Affairs.
1547	Aylmer. Eliminating notice to abutters for certain zoning hearings. Urban Affairs.
1550	Aylmer. Authorizing moratoria by local authorities on subdivision approval. Urban Affairs.
1561	Burke, Sprague. Regulating approval of definitive subdivision plans. Urban Affairs.
1571	Hall. Allowing use of land for purpose for which zoned. Urban Affairs.
1589	LoPresti. Authorizing renewal agencies re architectural, historical preservation. Urban Affairs.
1604	McKinnon, Tully, Olver. Creating Mass. Community Development Finance Corp. Urban Affairs.
1616	Timilty. Re comprehensive development permits. Urban Affairs.

House Bill No.	Sponsor(s), Abbreviated Title, Committee
460	Dwinnell. Directing inventories of public rights of way to short. Nat. Res. & Ag. Same as H. 814.
644	Wetmore. Regulating developments of regional impact. Nat. Res. & Ag.
647	Wetmore. Directing secretary of environmental affairs to prepare a comprehensive land use plan for the Commonwealth. Nat. Res. & Ag.
722	Chmura. Re subdivision control law. Urban Affairs.
808	Dwinell. Establishing state land use program. Nat. Res. & Ag. Same as H. 2553.
814	Walker. Directing inventories of public rights of way to shore. Nat. Res. & Ag. Same as H. 460.
815	Walker. To establish division of coastal zone management. Nat. Res. & Ag. Same as H. 959.
959	Lane, Silva. Establishing division of coastal zone management. Nat. Res. & Ag. Same as H. 815.
1021	Scaccia. Withholding school assistance from certain cities and towns (re housing). Urban Affairs.
1022	Scaccia. Withholding aid from cities and towns that exclude low or moderate income housing. Urban Affairs.
1029	Wilber. Defining zoning procedures. Urban Affairs.
1622	Brett, Timilty. Neponset R. Recreation; acquiring land for. Urban Affairs.
1734	Landry, Bresnick. Comprehensive land use planning. Nat. Res. & Ag.
1836	Sprague. Re zoning of lands subject to flood. Urban Affairs.
1967	Flaherty. Amending the environmental impact law. Nat. Res. & Ag.

House Bill No.	Sponsor(s), Abbreviated Title, Committee
2553	Walker. Establishing state land use program. Nat. Res. & Ag. Same as H. 808.
2797	King, Goode. Establishing development corporation for Boston's SW corridor. Urban Affairs.
2799	King, Fortes. Re citizen participation. Urban Affairs.
2831	Fantasia. Permitting MHFA to guarantee agricultural loans. Urban Affairs.
3046	Frank. To establish a Metropolitan Council. Urban Affairs.
3047	Frank. Clarifying status of historical and architectural districts. Urban Affairs.
3072	Frank. Establishing regional government, abolishing county government. redefining local government functions. Counties.
3795	Bartley, Lapointe, Bulger, Scalli, Bernashe, Demers, Goode, Kendall, Lappin, Newman, Quigley, Coffey. Establishing base conversion land bank. Commerce & Labor.
3905	Ames. Clarifying the conservation restriction law. Nat. Res. & Ag.
3907	Hatch, Ames, Gannett, Gray, Healy, Robinson, Gillette, Sprague, Saltonstall, To protect water and land in areas of the Commonwealth. Nat. Res. & Ag.
3909	McGee, Quinn. Requiring review of public lands held for natural resource purposes. Nat. Res. & Ag.
3951	McGee, Walker, Young. Constitutional amendment re taxation of wild or forest lands, open spaces, etc. Taxation. Same as S. 1443.
4908	Norton. Requiring certain builders to obtain abutters' approval for zoning changes. Urban Affairs.
5378	Urban Affairs Comm. Revision of subdivision control law. Urban Affairs.
5457	Zeiser, Brett, Gray, Harrington. To revise the zoning enabling act. (Formerly H. 525). Urban Affairs.

C. ALI MODEL LAND DEVELOPMENT CODE: AN OVERVIEW

Prepared by

E.M. Wade

The American Law Institute (ALI) was founded by the foremost members of the legal profession in 1923. Its purpose is to "promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice and to encourage... scientific legal work." One of the things that the ALI has to do is draft model legislation that would meet the goals of the Institute when enacted by state legislatures.[1/] The authority of the ALI is based on the individual and aggregate prestige and expertise of its members.[2/]

The suggestion that a Model Code on Land-Use be prepared was first broached in 1960; three years later, with a grant from the Ford Foundation, work was begun.[3/] Alison Dunham of the University of Chicago Law School was named as Reporter, and a Committee of Advisors was selected. After a series of provisional drafts were prepared and comments solicited from and given by planners, public officials and lawyers, Tentative Draft No. 1 was received by the Institute membership in 1968. Further tentative drafts were prepared and in April of 1974 the Proposed Official Draft No.1 was presented That Draft contained six Articles:

I. General Provisions
II. Power to Regulate Development
III. Local Land Development Planning
IV. Discontinuance of Existing Land Uses
V. Acquisiation and Disposition of Land
VII. State Land Development Regulation

Article VI, Land Banking is in Tentative draft form, while the remaining Articles VIII-XII, covering state land planning, enforcement, judicial review and financing are awiting commentary.

This paper attempts to present, in abbreviated form, the general institutional arrangements and administrative mechanisms typically referred to as the ALI Model Land Development Code.

The drafters of the ALI Model Code recognized that an all encompassing Code is beyond the endeavors of the project. The mass of federal legislation concerning the environmental regulation of land use alone narrows the influence of state law in this area. Therefore the drafters have limited the scope of the Model Code to the coordination of physical development. Social and economic factors are considered in the planning process and the determinations of the implementing bodies, but only insofar as they relate to physical planning and development.

The main objective of the Code is coordination on a local level, and between state and local governments. Thus, the requirement of a development ordinance seeks to combine zoning laws and subdivision controls. The provision of joint hearings for developers required to obtain multiple permits, and the subjection of all governmental agency development to the provisions of the local development ordinance seek to coordinate multiple agency action. The local government is further encouraged by the Code to take an active part in land development, rather than merely exercising restrictive controls. The individual rights of property owners to maintain uses existing prior to controls is considered by the Code which reflects the direction of recent court decisions in its treatment of defined local policies and the discontinuance of existing uses. The drafters, however, do rely on trafitional concepts of nuisance law to control some types of development, existing and proposed.

The redefinition of governmental roles in land use regulation and development is the basic vehicle upon which the drafters rely. In re-aligning the institutional arrangements and redesigning the concepts of enforcement and implementation, the Code seeks to represent the best interest of the toatal population of the adopting state and the loacl community.

Institutional Arrangements

The Land Development Agency (LDA) is an instrument of local government -exercising the power to deny or grant development permits.. The LDA can be any local official or agency that the local government designates. The local governmental unit may adopt the functions of the LDA for its own, or may delegate to the designated LDA any additional powers or functions. Under the latter action, the LDA could achieve the status of an independent commission. It is the intent of the drafters that the LDA remain distinct from the local legislative body, thereby avoiding the influence of political pressures when making its decisions.

The Code seeks to create impartiality in the LDA by establishing detailed procedures by which the LDA must administer its duties. In the past, model codes have sought to achieve this end by designating the internal structure of the administrative body, e.g. the SZEA and the SDEA. To facilitate organization and function in the LDA however, the Code leaves the internal structure of the LDA to the Agency itself.

The State Land Planning Agency (SLPA) is the office of land planning in the office of the Governor. This Agency would be required to establish standards for local development ordinances; to limit the application of local development ordinances in specific areas;

In Massachusetts, the Power Facilities Siting Council exercises those duties that would be conferred upon an LDA with regard to development of regional impact as imposed by a power production facility. The Department of Natural Resources and local conservation commissions are authorized to exercise the powers of protection over wetlands, areas that might, in whole or in part, be designated areas of critical state concern. Thus, the Model Code would necessitate either an abandonment of a state siting mechanism for power plants, or a transferral of the power of the DNR in one area to the SLPA. One possible modification of the Model Code would be the deletion of SLPA-LDA powers concerning power plants or wetlands.

The Model Code provides for institutional modifications of its own tripartite themes by allowing the SLPA to exempt specific areas or regions from particular limitations or control, while enabling other cohesive devlopments to be designated as integral regional developments.

Enforcement Procedures

The Model Code design to enforce state policies recognizes two entities that require regulation: activities and sensitive areas. The SLPA designates those activities subject to regulation by the term Activities of Regional Impact. Activities which, by the nature or magnitude of the development or its effects, present issues of state or regional significance may be so designated. In exercising its discretion in this area, the SLPA must consider six fators:

1. environmental pollution
2. increase in traffic
3. number of persons to be served

4. size of the site
5. generation of subsidiary development
6. character of the area

The rules applied by the SLPA, including those by which an activity is designated one of regional impact, may vary from one area of the state to another. Thus, development may be limited in one area, encouraged in another.

Developments that do not qualify as those of regional impact, but which do create a regional benefit may be afforded the status of the classification upon the election of the developer. Such developments include low and moderate income housing, public utilities, charitable institutions, and projects of governmental agencies other than those of the local government. Under this classification developments must still be licensed by the LDA, but under criteria that reflect regional or state interests rather than local ones. Appeals from decisions of the LDA may be made to the SLAB. The permit for any development of regional impact must be issued as a special development permit, subject to the provisions of Article II governing that classification. Further standards are applicable to developments of regional impact under consideration by and LDA to insure supportive development, and to assist local governments in meeting the increased demands on, and needs for, municipal services generated by the development.

A second regulatory designation within the authority of the SLPA is that of Areas of Critical State Concern. The procedures governing that action are designed to achieve full disclosure of the possible effects of any development. Activites that will be allowed in any area so designated during the interim period of notice and adoption of the regulations, must be approved by the State. This designation is limited to

areas reserved for new community development in a State Development Plan; those areas without a development ordinance three years after adoption of the Model Code; areas of regional or state wide environmental importance; and those areas that would be significantly affected by a facility of major public investment. The latter concept is termed a facility of major public importance. Exempted from this classification are local governmental facilities, certain highways and airports, and local educational facilities. The LDA may submit its own regulations for an Area of Critical State Concern to the SLPA for consideration and adoption. If the LDA elects not to submit regulations, the SLPA may impose its own regulations on the LDA which is then required to enforce them.

Administrative Actions

All administrative actions required in the processing of applications for developmental permits are originally functions of the LDA. The Code does not require a local government to adopt a development ordinance, but provides for state imposition of such an ordinance by the SLPA in the absence of local government action. The development ordinance itself may classify activities into four categories: 1) general development, 2) special development, 3) development exempt from permit requirements, but governed by the ordinance, and 4) development exempt from regulation.

The Code abandons the comprehensive plan concept of the SLPA and allows development ordinances to be applicable to less than all of a local government's jurisdiction. Also abandoned is the SLPA requirement that regulation be uniform in each district. The drafters leave questions of equal protection and discriminatory application

of regulations to the protection afforded by general constitutional provisions.

In granting development permits the LDA may, in its discretion, impose on general development, restrictions relative to compliance with plans submitted to the LDA, a maximum time within which the project must be completed, and measures necessarry to ameliorate adverse effects on neighboring land. Also as an exercise of its discretion, the LDA may impose stricter standards on special developments including siting stipulations, future maintenance requirements, the sequence the development will follow, and the duration of its use. If authorized by the development ordinance, the LDA may charge reasonable fees for filing applications, and may require fees or land dedications to provide adequate means for the local government to meet increased demands on its services.

The LDA may allow exemptions to the regulations of the development ordinance under specific procedures. Other instances appropriate for considertaion of special development permits may be allowed by the development ordinance. A special development permit may be denied only if the proposal does not qualify as a special development under the grants of authority to the LDA. All modifications in applicable regulations governing a permitted or existing use, sub-division of land, economy of use, revision of district boundary lines, community service facilities, PUD's, or areas under special plans, may be granted by procedures and under criteria governing special development permits.

The LDA in considering an application for a development of regional impact that is authorized by the development ordinance, must balance the net benefits and net detriments. This balance may not

be limited to economic considerations only, but must include intangibles not reducible to dollar values. Similarly, LDA consideration of effects may encompass areas not under the jurisdiction of the local government. The SLPA may submit a report expressing its views on a matter before the LDA that requires a balancing of detriments and benefits. If the LDA requests the views of the SLPA, then that Agency is required to submit a report. The SLPA may by rule exempt any region, or include any single region, under the regulations of the state if it determines that the impact of development in the region would, or would not, have significant effects in that or in adjacent regions.

The Code seeks to avoid conflict and confrontation between state development and local interests by subjecting all governmental development to local regulation. An administrative appeal procedure is available to determine if local regulations are too restrictive of state activity. Thus, any decision effecting local development by a governmental agency (other than a local government) may be appealed to the SLAB and the decision of the Board will be binding on the local government and the LDA. To avoid separate actions being maintained before the SLAB and in the courts, the same requirements for standing to appeal apply to either forum. A court may stay its own proceedings if the same question is before an LDA for declaratory judgement, or before the SLAB, and disposition of the question there would render court action unnecessary.

Substantive Rights and Duties

The balance of rights and duties of individuals and governmental agencies under the Model Code has been shifted. No discretionary

issuance of a development permit without the requisite public hearing will be set aside on the basis of that procedural failure unless a request for a hearing on the permit is submitted to the LDA within four weeks of its issuance. The required publication of all LDA actions is considered adequate notice to interested parties and to the general public. The full disclosure of internal LDA organization and functions, and publication of actions is considered a satisfactory safeguard of public interests. The formalized procedures of all LDA actions and the required record of all proceedings, mandate that parties to the hearings be limited. The Code specifies who the parties admitted as of right to the hearings should be, and provides for additional parties to be admitted by the rule-making powers of the SLPA or at the discretion of the hearing officer. To ensure impartiality, the Code requires that the hearing officer communicate with no party to the proceeding except on the record, and that no reliance be placed on any matter that does not appear in the record.

The LDA may specify by declaratory order what forms of development it will allow on a particular site or parcel of land. This action may be taken at the request of the land owner of the particular site or parcel, or on the motion of the LDA itself. Such a declaratory order is in effect for one year.

The developer to whom a permit is issued acquires no vested rights in the development ordinance as it stood at the time of application or issuance. The LDA or a court may grant a dispensation to a holder of a permit if the interests of justice require it. This provision is considered by the drafters a sufficient safeguard against abusive delay by an LDA, and preferrable to a requirement of LDA action within a specified time of receipt of an applica

to designate and specify the boundaries of geographic areas of critical state concern, and to establish guidelines for development in those areas. In the absence of regulation of development by the local government, the SLPA could act in its stead. The SLPA is required to define those activities that have an impact of state or regional significance. Acquisition of land for large scale developments of a public purpose is also within the powers of the SLPA. The drafters of the Code have rejected the alternative establishment of a state regulatory agency issuing permits duplicative of those required at a local level. A parallel state procedure would intensify friction between local and state governments, and add to the burdens of cost and time imposed on the developer.

The State Land Adjudicatory Board (SLAB) would receive appeals from orders or rules of any LDA. The jurisdiction of the Board is not exclusive: access to the courts for declaratory relief would still be available. The procedure for applying to the Board requires timely action. The Code is silent on the finality of the Board's decisions, but it may be resonably imputed that recourse to a court of proper jurisdiction is not precluded when a decision of the Board is challenged.

The SLAB could be established within the same department as the SLPA, but the independence of the Board in its determinations is clearly reserved by the Code provisions. In this regard, the Code is specific and its procedures established for rendering the Board's decisions stresses its autonomy. While seeking to prevent discourse between the Board and the original investigatory body, the Code requires that the Board rely on the record of the proceedings below, required in all matters before the LDA or the SLPA.

Similarly, once a developer has received a permit, no rights vest unless timely commencement of the project and substantive expenditures have been made in reliance on the permit.

The SLPA is required to maintain and publish in a permanent register, a list of permits required by governmental agencies prior to development. The developer who must acquire multiple permits may request a joint hearing on all applications from the SLPA. The standards for issuance of the permits are not changed but the procedures are coordinated to expedite administration thereof. The development ordinance of a local government may require the discontinuance of a particular land use by districts or throughout the jurisdiction. These orders must be made in conjunction with a state or local land development plan, or exercise of SLPA regulations over activities or critical areas. An LDA may exempt particular sites from such discontinuance orders, also.

The process by which the Model Code is prepared invites debate and comment, but the compromise proposals that are then developed are not received without criticism. A most important caveat is given by the Reporters in presenting Tentative Draft No. 2. They pointed out that the draft was intended as "... a model code and not a uniform enactment..." The Code states that it is concerned only with the physical development of land use, and that its scope necessitates that economic and social considerations be omitted. But the very assumptions made and institutional arrangements chosen belie this narrow self-restraint.[5/] The basic concept motivating the Code seems to be that local governments regulating developments effect issues and interests larger than those protected by the

locality, suggesting that ultimately most local controls should be eliminated.[5/]

The very flexibility that the Code seeks to achieve through its attitude toward municipal planning could militate against that informed and deliberate process envisioned by the Code as the bedrock of responsible, responsive government. The fine balance that the ALI tried to achieve through its own process of comment and revision could be completely unhinged by the piecemeal adoption and local modification of the basic elements of the suggested Code. Great confusion might result from the superimposition of the Model Code upon existing state laws.

The ALI Model Code should not be viewed as a panacea for th land use concerns of the Commonwealth. That was not the intent of the drafters. As the product of many years of compromise it is hardly the distillation of the best thoughts on land use control, but it does provide the necessary source material for improving and re-thinking prevailing legislation. If, as the Code assumes, local land use decisions are best made on the scene, then the citizens of the Commonwealth should not abrogate their responsibility to the distant members of the American Law Institute.

FOOTNOTES

1. Goodrich, The Story of the American Law Institute, WASH. U. L.Q. 283 (1951).

2. Hart and Sacks, THE LEGAL PROCESS, 757-771 (1958).

3. American Law Institute, Model Land Development Code, Tentative Draft No. 1, Forward.

4. Dunham, ALI Model Land Development Code, LAND USE CONTROL ANNUAL (1972).

5. "Presumably, lawyers should confine themselves to the law... the ALI has gone much further: the drafts a reorganization of certain land use powers among different levels of government, a abasically political question, and makes a significant determination concerning allocation of the land... this involves economic and social issues."

   B.H. Seigan, LAND USE WITHOUT ZONING, 167-168 (1972).

6. Ibid.

D. THE RE-USE AND REVITALIZATION OF CENTRAL CITY LAND

The Re-Use and Revitalization of the Central City*

Introduction

Any attempt to formulate a state land use policy must take into account the linkage between the problems and potentials of the central cities, suburbs, and rural areas. As both Gerald McNeil and Representative David Lane have pointed out during the October 21st meeting of the Land Use Subcommittee:

> Economic pressure on so-called vacant land being used for farms is really caused by the high price of land in the cities and suburbs. We cannot separate the needs or abilities of the city from the town or rural area. We need a more economical way to re-use outmoded areas of the central city in order to lessen development pressures on the rural areas. (Gerald McNeil)

> If we do not make it possible for people to remain in the city, we are going to have a continuing demand to use outlying open space for development. We must make it possible and desirable for people to stay in the cities. (David Lane)

Even as recently as November 26, 1974, Governor-elect Michael Dukakis announced that his administration would concentrate its job development efforts "in the older urban cities rather than in the suburban industrial areas." Dukakis said that seven out of every ten unemployed persons in the state live in the cities and if they could be put to work, the unemployment rate would go down to three percent. He cited the efforts by Boston in developing an industrial park in Dorchester as an example of

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*This paper is based upon a five-volume report entitled, Central City Modernization: The New-Town-Intown Approach. Harvey S. Perloff, et. al. (School of Architecture and Planning, U.C.L.A.), December, 1973. Citations throughout the paper are indicated by a volume and page number, i.e., (I-7).

bringing jobs back to the city.

The concerns of Dukakis, Lane, and McNeil all focus on the goal of making the central city a more viable place to live and work. Federal housing and urban development programs over the past generation have pursued this goal by attempting to re-use and revitalize various parts of the central city. Many lessons have been learned from these programs. Any attempt to formulate new policies for central city revitalization should take these lessons into account. This paper will review current research and opinion on the issue of central city re-use and revitalization. We will begin by looking at the characteristics of large cities and urban areas in Massachusetts. We will then examine the general lessons learned from the federal experience with the Urban Renewal and Model Cities programs. From these experiences we will attempt to identify the key objectives and most pressing revitalization issues that ought to be taken into account in formulating a state land use policy or in considering new land use planning mechanisms. We will then examine the New-Town-Intown (NTIT) program and techniques for financing central city redevelopment efforts. Finally, we will address the question, "What can the state do to help residents and officials of the central city in solving their economic, social, and environmental problems?"

Characteristics of Massachusetts Cities

Cities all across the nation are plagued with the problems of blight, congestion, inadequate funds, an increasing concentration of low-income, racial and minority groups, declining middle and upper income populations, loss of employment opportunities in less skilled manufacturing jobs, inadequate housing, crime, etc. To state that these problems are of national rather than simply local significance is only to reiterate a well accepted fact. For example, in 1970, 64.4 percent of the population of the U.S. lived in SMSAs, and 30.7 percent of the population lived in cities with populations greater than 50,000. In Massachusetts the problems of the cities are more of a state-wide concern than in other less urban states. In 1970, 85 percent of the people living in Massachusetts lived in SMSAs (20.6 percent higher than the national average), and 41.9 percent of the state's population lived in cities over 50,000 (11.2 percent higher than the national average).

Tables I-V summarize selected characteristics of Massachusetts SMSAs and cities over 50,000.

Table I shows that the population of the majority of cities over 50,000 and almost all central cities has declined since 1960. Cities with populations over 50,000 constituted 47.2 percent of the Massachusetts population in 1960 and 41.9 percent in 1970, a loss of 5.3 percent. However, these cities still contain almost half of the state's population.

Table II shows that SMSAs included 86.6 of the Massachusetts population in 1960 and 85.0 percent of the state's population in 1970. In

addition, although the number of people living in each SMSA increased between 1960 and 1970 (Column 3), the percentage of people in each SMSA living in the central city decreased in all SMSAs across the state (Column 9). The percentage of people living in the central city of each SMSA varies from a low in the Boston SMSA of 22.6 percent to a high in Fitchburg-Leominster of 78.5 percent, with the larger SMSAs having a smaller percentage of the total population living in the central cities (Column 7).

Table III shows that the median income in cities over 50,000 is always lower than the median income in the corresponding SMSA. In addition, the proportion of people with incomes under 6,000 is consistently higher in cities over 50,000 than in their SMSAs or the state as a whole. The proportion of people with incomes over $15,000 is almost always lower in the cities than in the corresponding SMSA or the state as a whole.

Tables IV and V deal only with the Boston SMSA but are illustrative of the problems throughout the rest of the state. Table IV indicates that the percentage of Blacks in Boston is four times higher than the percentage of Blacks in the SMSA and the state. Other minorities are also over-represented in the Central City of Boston when compared to the percentages in the rest of the SMSA and the state.

Table V shows that Boston has 7.6 percent less manufacturing employees than the SMSA and 9.9 percent more Finance Insurance and Real Estate employees than the SMSA average. The Boston suburbs over 50,000 tend to contain less Service, Finance, Insurance, and Real Estate Industries than the SMSA and seem to be either wholesaling or manufacturing centers.

TABLE I POPULATION OF CITIES AND TOWNS OVER 50,000 (1960-1970)

Cities over 50,000 Central Cities	1960 Population	1970 Population	Change between 1960-1970 Number	%	Net In or Out-Migration	% of State Population 1960	1970
1. Boston	697,197	641,071	-56,126	-8.0	-101,862	13.5	11.3
2. Worcester	186,587	176,572	-10,015	-5.4	-20,080	3.6	3.1
3. Springfield	174,463	163,905	-10,588	-6.1	-24,181	3.4	2.9
4. New Bedford	102,477	101,777	-700	-0.7	-4,942	2.0	1.8
5. Fall River	99,942	96,898	-3,044	-3.0	-9,553	1.9	1.7
6. Lowell	92,107	94,239	+2,132	+2.3	27,611	1.8	1.7
7. Brockton	72,813	89,040	+16,227	+22.3	6,841	1.4	1.6
8. Lawrence	70,933	66,915	-4,018	-5.7	-7,965	1.4	1.2
9. Chicopee	61,553	66,676	+5,123	+8.3	-3,379	1.2	1.2
10. Pittsfield	57,879	57,020	-859	-1.5	-5,163	1.1	1.0
11. Holyoke	52,687	50,112	-2,577	-4.9	-5,330	1.0	.9
Non-Central Cities							
1. Cambridge	107,716	100,361	-7,355	-6.8	-14,651	2.1	1.8
2. Somerville	94,697	88,779	-5,918	-6.2	-16,104	1.8	1.6
3. Lynn	94,478	90,294	-4,184	-4.4	-	1.8	1.6
4. Quincy	87,409	87,966	+557	+0.6	-8,506	1.7	1.7
5. Medford	64,971	64,397	-574	-0.9	-5,155	1.3	1.1
6. Malden	57,676	56,127	-1,549	-2.7	-5,796	1.1	1.0
7. Waltham	55,413	61,582	+6,169	+11.1	-1,127	1.0	1.1
8. Brookline	54,044	58,886	+4,842	+9.0	-	1.0	1.0
9. Arlington	49,953	53,524	+6,429	+7.1	-	1.0	.9
10. Weymouth	48,177	54,610	6,433	+13.3	-	.9	1.0
11. Framingham	44,526	64,048	+19,522	+48.3	-	.9	1.1
Total	2,427,970	2,384,778				47.2	41.9

TABLE II: SMSA CHARACTERISTICS BY CENTRAL CITY AND SUBURB

Col. 1 SMSA	Col. 2 Pop. 1960	Col. 3 Pop. 1970	Col. 4 %	Col. 5 %SMSA in Central City 1960	Col. 6 %SMSA in Suburbs 1960	Col. 7 %SMSA in Central City 1970	Col. 8 %SMSA in Suburbs 1970	Col. 9 % in Pop. in Central City of SMSA '60-'70	Col. 10 SMSA Pop. As % of State Pop. 1960	Col. 11 SMSA Pop. As % of State Pop. 1970
1. Boston	2,661,965	2,857,748	7.4	26.3	73.7	22.6	77.4	-3.7	+51.7	50.2%
2. Springfield	496,642	531,226	7.0	-	-	-	-	-	9.6	9.3%
3. Worcester	350,859	367,897	4.9	53.2	46.8	48.0	52.0	-5.2	6.8	6.5%
4. Lawrence Haverill	199,533	221,208	10.9	58.8	41.2	51.1	48.9	-7.7	3.9	3.9%
5. Lowell	164,243	212,860	29.6	56.1	43.9	44.3	55.7	-11.8	3.2	3.7%
6. New Bedford	149,424	161,228	7.9	69.6	31.4	63.1	36.9	-6.7	2.9	2.8%
7. Fall River	132,464	142,084	7.3	75.4	24.6	69.2	31.8	-6.2	2.6	2.5%
8. Brockton	119,758	150,416	25.6	60.8	39.2	59.2	40.8	-1.6	2.3	2.6%
9. Fitchburg Leominster	90,158	97,164	7.8	78.7	21.3	78.5	21.5	-0.2	1.8	1.7%
10. Pittsfield	93,796	96,817	3.2	-	-	-	-	-	1.8	1.7%
Total	4,458,836	4,838,648	-		-	-	-	-	86.6	85.0%
STATE	5,148,578	5,689,748								

TABLE III: INCOME CHARACTERISTICS IN CITIES OVER 50,000 AND THEIR SMSAs

Cities over 50,000 Central Cities	Median Income In City	Median Income In SMSA	% Incomes under $3,000 In City	% Incomes under $3,000 In SMSA	%3,000-5,999 In City	%3,000-5,999 In SMSA	%6,000-9,999 In City	%6,000-9,999 In SMSA	%10,000-14,999 In City	%10,000-14,999 In SMSA	%15,000 and over In City	%15,000 and over In SMSA
1. Boston	9,133	11,449	10.5	6.1	17.4	10.8	28.3	23.2	25.7	29.8	18.1	30.1
2. Worcester	10,038	10,718	7.5	5.9	13.9	11.4	28.4	26.9	29.8	33.0	20.4	22.8
3. Springfield	9,612	10,314	9.1	6.8	15.6	12.8	28.4	27.8	30.0	31.9	16.9	20.8
4. New Bedford	8,230	8,792	12.5	10.5	19.9	17.8	31.9	31.1	24.1	26.7	11.6	13.9
5. Fall River	8,289	8,919	11.6	9.8	18.8	17.0	34.3	32.6	25.2	28.0	10.1	12.6
6. Lowell	9,495	10,935	8.3	6.0	15.8	10.9	30.0	25.7	29.3	34.3	16.6	23.3
7. Brockton	10,377	10,928	6.6	5.4	11.9	10.2	28.5	26.6	32.7	35.6	20.3	22.2
8. Lawrence												
9. Chicopee	9,738	10,369	5.8	6.8	14.1	12.8	32.3	27.6	32.4	31.8	15.4	21.0
10. Pittsfied	10,678	10,794	6.3	5.8	11.6	11.7	26.8	26.1	33.2	33.7	22.1	22.7
11. Holyoke												
Non-Central Cities												
1. Cambridge												
2. Somerville	9,594	11,449	7.6	6.1	14.9	10.8	30.6	23.2	30.4	29.8	16.5	30.1
3. Lynn	9,739	11,449	8.6	6.1	14.6	10.8	28.8	23.2	30.0	29.8	18.0	30.1
4. Quincy	11,094	11,449	5.3	6.1	11.4	10.8	25.1	23.2	32.4	29.8	25.8	30.1
5. Medford	11,145	11,449	4.9	6.1	10.2	10.8	26.0	23.2	32.5	29.8	26.4	30.1
6. Malden	10,204	11,449	7.8	6.1	11.4	10.8	29.3	23.2	30.7	29.8	20.8	30.1
7. Waltham												
8. Brookline												
9. Arlington												
10. Weymouth	11,631	11,449	4.8	6.1	7.7	10.8	24.0	23.2	36.4	29.8	27.1	30.1
11. Framingham	10,843	11,449	14.9	6.1	12.0	10.8	18.7	23.2	24.9	29.8	29.5	30.1

TABLE IV RACIAL CHARACTER OF BOSTON COMPARED TO THE SMSA AND THE STATE

Race	%Boston SMSA	%Central City Boston	%State
White	94.7	81.9	96.3
Negro	4.4	16.3	3.1
Other	0.9	1.8	.6
Foreign stock	33.7	37.0	33.3
Foreign born	9.4	13.3	8.7

TABLE V BOSTON SMSA EMPLOYMENT CHARACTERISTICS

Industry	Percentage Employees								
	SMSA	Boston	Camb.	Lynn	Mal-den	Med-ford	Quincy	Somer.	Fram.
1. Agriculture & Min.	.3	.2		.1	.3	.5	.1	.1	.6
2. Construction	5.6	5.3		2.5	12.4	10.1	4.8	6.7	4.5
3. Manufacturing	23.9	16.3		55.0	31.8	19.6	39.5	22.4	42.5
4. Transportation, Communications, Utilities	7.2	10.5		9.6	8.3	10.9	9.0	7.7	5.2
5. Wholesale, Retail	28.8	30.3		20.6	28.8	43.8	31.4	45.1	31.0
6. Fire	8.7	18.6		3.4	5.0	1.7	5.2	1.8	3.7
7. Service	25.5	18.8		8.8	13.4	13.4	10.0	16.2	12.5

From these facts it is obvious that the problems of the cities directly affect a substantial percent of Massachusetts residents. In addition, as was suggested earlier, the problems and conditions within urban areas have a substantial impact on the activities and development pressures in areas outside of the urban system. For these reasons, the re-use and revitalization of the central cities is an issue of interest to all citizens in the state of Massachusetts. Attempts to solve the problems of the central cities will directly or indirectly affect every resident of the state. Consequently, any attempts at redevelopment and revitalization must take advantage of the lessons learned from past redevelopment efforts.

The Urban Renewal and Model Cities Programs

The primary weaknesses of both the Urban Renewal and Model Cities programs might be summarized as follows:

1. Lack of clarity and consistency in the objectives pursued.
2. Inadequate scale and scope of activities.
3. Inadequate authority and resources to accomplish difficult tasks. (I-2)

The lack of clarity and consistency of objectives in the Urban Renewal program is demonstrated by three lists of program goals appearing between 1965 and 1970. In 1965 David Page identified five major objectives of the renewal program:

1. Increasing national income - economic efficiency.
2. Improving the competitive position of the central city - intercommunity redistribution of income (place prosperity).
3. Mitigation of poverty - interpersonal redistribution of income (people prosperity)
4. Elimination of blight and slums.
5. Beautification of the nation's cities. (I-12)

In 1967, H.U.D. Secretary Robert Weaver identified three new goals for the renewal program:

1. Conservation and expansion of housing supply for low and moderate income families.
2. Development of new job opportunities.
3. Emphasis on renewal areas with critical and urgent needs. (I-20)

Finally, in the early 1970's, new objectives for the renewal program were established by the President's Task Force on Urban Renewal:

1. To enhance the efficiency of land use.

2. To improve the fiscal and economic condition of the community by increasing the tax base, or through savings in municipal services, or a net increase in personal or business income.
3. To decrease the threat of balkanization and polarization of American Society and to help in exorcising the spectre of economic and ethnic apartheid.

(I-68)

These three lists reflect an interesting change of program objectives over time and highlight the basic inconsistency of Urban Renewal Program objectives. It is unclear whether the program was intended to help poorer and less advantaged groups in the central city or simply to eliminate pockets of blight.

The program began with an orientation toward the physical elimination of blight and slums. It was essentially a "hardware" approach to the problems of the central city. The program was never able to disassociate itself from the negative connotation acquired when its initial activities resulted in a net loss of low-and-moderate-income housing, and the conversion of central city land from residential to commercial uses. This approach was criticized on the grounds that the poor were being forced to pay a disproportionate share of revitalization costs. In short, you don't help the poor by tearing down their housing, destroying their neighborhoods, and forcing them to pay moving costs and higher rents. On the other hand, if one is interested in maximizing the central city tax base, it may be necessary to encourage the return of middle and upper income families and commercial and industrial uses.

These conflicts suggest that in attempting to revitalize the central city, it is necessary to be concerned not only with efficiency (the value

of the tax base created) but also with equity (the distribution of the value created) and the general quality of life in the central city. It was this dilemma, bolstered by widespread criticism and political pressure that prompted Weaver's 1967 objectives. With these objectives, the Urban Renewal Program seemed to be moving toward a recognition of the necessity of a "software" or human services orientation to supplement its traditional physical approach.

The objectives listed by the 1970 Presidential Task Force represent a move away from the orientation toward human services. In fact, "the administration downplayed the importance of low-and-moderate-income housing. that had characterized the selection criteria of the mid-1960's" (I-68) Thus, in the mid and late 1960's the renewal program seemed to be moving toward a more flexible comprehensive approach to urban problems. This approach included the recognition of the importance of human services and the focus of the Neighborhood Development Program which sought to change the emphasis of Urban Renewal from single projects to a more programmatic linked-project orientation. These trends, however, were countered by the political forces of the 1970's, and the renewal program has remained a basically physical approach to the problems of the central city.

The most important lesson derived from the Urban Renewal Program was the need to balance physical renewal efforts with human service programs. In addition, it became evident that the scale of most renewal projects was inadequate to significantly influence general conditions in the city as a whole. The project approach often produced a displacement effect in which problems were not solved but simply shifted from one area of the

city to another. These lessons suggested a need for a programmatic approach in which different projects were linked in order to avoid displacement and to achieve the scale necessary to impact the problems of the whole city.

Model Cities was an attempt to rectify the physical bias of the renewal program and to solve the problems of lack of governmental coordination and insufficient funding. These goals were to be accomplished by concentrating both human services and physical renewal efforts on the worst areas of the city (the model neighborhood). While the relationship between urban renewal and the poor has remained unclear throughout the program's life time, Model Cities was clearly designed to focus upon the needs of the disadvantaged. The problem with this objective was that it was never operationalized. It was never really clear whether Model Cities was "to be merely a specialized welfare program; an improved way to deliver certain services; or an approach to changing those elements of the overall structure of the central city which impacted the poor." (I-3)

Although Model Cities successfully demonstrated the need to balance physical renewal with human services programs and increased citizen participation, it did not bring about any systematic structural changes or modernization in the central city as a whole. Perhaps the greatest weakness of the Model Cities Program was its attempt to concentrate resources in the least viable parts of the city. As Perloff notes:

> Although Model Cities was fairly successful in combining substantial physical renewal funds and social program funds into the model neighborhood, this very success meant both Model Cities and Urban Renewal moved toward

> concentration of resources in the least viable parts of the city. Since even these funds were never really sufficient to provide a 'critical mass' (to turn the model neighborhood around) the impact of the expenditures was limited. (I-24)

Consequently, the chief lesson derived from the Model Cities program was that central city revitalization efforts are most successful when they move with rather than against the existing economic trends in a region. This lesson consisted of two key components. First, Model Cities found that it was virtually impossible to 'turn around' the worst areas of the central city without considerably more financing than was available. Second, the concentration of funds in one neighborhood or project area meant that the program would probably be inadequate in scope and scale to have a meaningful impact on the central city as a whole. These conclusions suggest that it is extremely important to define the forces which are making the city economy grow.

The need to define existing economic trends suggests another problem which both the Model Cities and Urban Renewal programs have encountered: "There is a serious shortage of systematically collected and published data on the inner city." (I-26) Alexander Ganz of the BRA has noted that this information gap has concealed the fact that the role of the central city as a producer of services, jobs, and incomes has been expanding even as its population has declined. (I-27) Ganz maintains that "while certain forces have caused wholesaling and manufacturing activities to move toward the suburbs, gains in the office-based service sector have more than made up for the losses." (I-27) Furthermore, at

the national level, service industries are growing at a higher rate than manufacturing industries.

These trends indicate that one strategy of economic development might be to increase the attractiveness of the city for the relatively fast growing service industries which benefit from the city's existing aglomeration economies. At the same time, rather than trying to bring land intensive manufacturing and wholesale activities back from the suburbs (which might entail large subsidies), the city should focus upon attracting and keeping the kinds of manufacturing industries which employ low skill labor and do not require large plant sites.

The creation of both new service and manufacturing jobs in the central city may also increase the effective demand for public services. Thus, an economic development program of this nature (moving with existing economic trends) has the potential of creating new jobs in three sectors of the central city economy.

Even moving with the existing economic trends may produce two counter-productive results which will generally require financial assistance or structural changes from outside the central city (alternative methods of financing revitalization efforts will be discussed later). First, since central cities can only tax property, they do not have the power to tax much of the income which service oriented enterprises produce. This leaves the city in the position of having to provide services for both the growing office based industries and its disadvantaged, from a shrinking tax base. Second, the mere creation of jobs does not necessarily help the low income and disadvantaged population. As both Model

Cities and Urban Renewal indicated, manpower, job training, and other people-oriented programs will be necessary to help low-income groups take advantage of new job opportunities. These programs, in turn, place additional financial burdens on the city.

Consequently, if central city redevelopment is to help the disadvantaged, while at the same time improve the city's tax base and fiscal situation, a 'linked area' approach will be necessary which combines 'opportunity areas' with 'need areas'. (I-39-40) Ghetto dispersal must be linked with ghetto development. The construction of low-and-moderate income housing must be linked with the development of new commercial and industrial centers. The creation of jobs in viable economic areas must be linked to manpower training and service programs.

The necessity of utilizing a linked project approach has also been demonstrated by several other lessons derived from the Model Cities and Urban Renewal programs. First, given the fact that minority and low-income groups are beginning to constitute a disproportionate share of the central city's population, great care must be taken to address the specific problems of these groups. Many of these problems result from class and racial discrimination, which limit the upward mobility of racial minorities and low-income groups. Both Model Cities and Urban Renewal sought to create stable middle class neighborhoods in blighted areas of the city. In one sense, this goal envisioned a static response to a problem which results from a dynamic process. Rather than attempting to create stable middle class neighborhoods, Model Cities and Urban Renewal learned that emphasis should have been placed on attempting to accelerate the process of upward mobility for newcomers and the disadvantaged. Thus, some of the

neighborhoods created by revitalization efforts should probably serve as transition neighborhoods in which the newcomer and the disadvantaged are provided the low-income housing that they can afford, and the opportunity to develop the skills necessary to enhance their upward mobility. As these groups consolidate their position, they might leave the transition neighborhood and take advantage of opportunities in other linked areas. A regional approach to this problem may become a necessity because discriminatory and exclusionary policies by outlying suburbs may counter central city attempts to create economic opportunity and ghetto dispersal.

Both Model Cities and Urban Renewal also learned that meaningful citizen participation was essential to making revitalization programs work. Residents of an area must be allowed to define their own needs and to design the programs which will ameliorate their problems. Government officials, planners and other technicians must work with residents as co-equals, because only the residents have first hand knowledge of their own problems and how revitalization attempts may help to solve these problems.

Finally, both Urban Renewal and Model Cities identified two trade-offs that often must be made in central city revitalization efforts. First, programs seeking to enhance the economic and social characteristics of an area may entail negative environmental effects. (The Park Plaza Project in Boston is a classic case of a development of this nature) The negative environmental consequences must be carefully measured against economic and social gains. The distribution of these economic and social benefits must also be considered. Then, environmental impacts must be balanced against economic and social impacts to arrive at a final determination of a pro-

ject's desirability.

The second trade-off that central city revitalization attempts must consider is that between taxable property and more viable economic and institutional development. As Thompson observes, "The real economic base of the larger metropolitan region is the creativity of its universities, and research parks, the sophistication of its engineering firms, the flexibility of its transportation system, and all other dimensions of infrastructure that facilitate the quick, orderly transfer from old dying bases to new growing ones." (I-38) Many of the institutions described above are exempt from the city's property tax (universities, transportation systems) or must be encouraged, with tax abatements, to locate in the central city (new research or office complexes, etc.). This creates the problem of forcing the central city to forego needed property taxes in order to attract the type of development which has the greatest long-term viability. Careful calculation of payment in lieu of taxes, or special tax arrangements may be necessary to provide viable development while at the same time not draining the city's tax coffers.

In conclusion, past federal experiences have identified the desirability of setting two key inter-related objectives for public investment in the central city:

> (1) To aid in the revitalization of the central city in terms of modernizing and strengthening the basic socio-economic and physical foundations.
>
> (2) To improve the quality of life and range of opportunity available to the less advantaged in the central city.
>
> (IV-1)

Both Urban Renewal and Model Cities have worked toward these objec-

tives at various times during their existence. They failed, however, to translate these objectives into operational program elements. At the time of their inception, both Model Cities and Urban Renewal were viewed as the answer to the problems of the central city. These conceptions, however, were based on an inadequate understanding of how urban systems operate. From these programs we have changed our view of the problems, and added to our understanding. This understanding is still not complete, and any new programs will have to contend with a high degree of uncertainty. We have learned that any revitalization program must concentrate on physical, economic, and social development simultaneously. Any attempt to address these problems separately will lead to counter-productive results. In addition, past federal experiences have demonstrated that the powers and resources of local government need to be enhanced to cope with the complex inter-relationships of central city problems. To date, local governments have not assumed the responsibilities or developed adequate mechanisms to carry out meaningful revitalization programs. The use of public and private development corporations to create large scale New-Towns-Intown may be one answer to this and other problems of central city revitalization.

The New-Town-Intown Program

Federal financial assistance to encourage the construction of New-Towns-Intown (NTIT) is provided for in Title VII of the Housing and Urban Development Act of 1970. To date, financial assistance consists of loan guarantees which seek to improve the availability of capital for new town projects by allowing developers to borrow money at lower interest rates, and to offer debt repayment instruments similar to corporate bonds. Private developers may be guaranteed up to 80 percent of the value of real property before development and 90 percent of the land development costs up to $50 million. Public developers may receive federal guarantees covering 100 percent of both the value of real property and land development costs. Title VII also provides for federal loans, public service grants, and special planning assistance, but to date, funds for these purposes have not been appropriated. This lack of appropriations and the $50 million ceiling have already severely limited the potential impact which New-Town-InTown might have on the revitalization of central cities.

The purpose of the NTIT program was to enlarge the scope and content of central city redevelopment programs in order to overcome the problem of inadequate scale encountered by both Urban Renewal and Model Cities. The NTIT program seeks to utilize the key lessons from Urban Renewal and Model Cities by using a programmatic redevelopment approach to achieve broad scale social objectives.

Its goals as defined in the Declaration of Policy in Title VII, are to "refine the role of the federal government in revitalizing existing communities and encouraging planned, large-scale urban and new community

development." "...treat comprehensively the problems of poverty and employment (including the erosion of tax bases and the need for better community services and job opportunities) which are associated with disorderly urbanization..."; and "...develop means to encourage good housing for all Americans without regard to race or creed." (V-2)

From the outset, like both of its predecessors, the NTIT program seems to suffer from the problems of lack of funding and a failure to operationalize objectives.

The New-Town-Intown program has stimulated the following different approaches or models of central city development:

MODEL I: Development on a large vacant or abandoned parcel of land outside the central business district (examples are Fort Lincoln, Welfare Island, and Pontchartrain).

MODEL II: Development of a large contiguous parcel of under-utilized land within the central city, basically similar to the most advanced of the later urban renewal projects (e.g., San Antonio, San Diego).

MODEL III: Development of a very large mixed-use sector of the central city, involving non-contiguous projects (rather than a single project) and joining New-Town-Intown approaches with other approaches (e.g., Hartford Process, Cleveland, Chicago).

Model I developments will probably only achieve limited objectives because their potential is determined by the availability of vacant or abandoned sites. The popularity of this approach stems from the need to minimize the costs of land acquisition and resident relocation. The minimization of these costs, however, does not guarantee that the site will have sufficient economic potential or be of adequate scale to positively impact the central city as a whole. Thus, the development of vacant sites

may not be the best way to spur revitalization.

Model II generally provides for projects of a larger scale, with more economic potential, and boundary flexibility than Model I. However, the orientation of Model II toward a single project area again limits its potential impact on the entire central city. Projects of this nature run the risk of simply displacing problems from one part of the city to another; or becoming an enclave of new development in a sea of deterioration.

Model III involves linking different kinds of projects in a programmatic attack on the problems of the central city. With this approach, various areas could be balanced against one another. Returns from profitable developments could be used to finance or provide services for less profitable developments. People displaced from a project with high commercial potential could be relocated in another project area with greater residential potential. Theoretically, the whole urban region could be used as the Model III program area. However, political constraints suggest that only the central city and not its outlying suburbs will be included. This approach offers the greatest flexibility in project design and seems to take advantage of the lessons gained from the Urban Renewal and Model Cities experiences.

As Perloff notes, the "linked area approach is based on the recognition that the NTIT is, because of its location in the central city, more tightly meshed into the metropolitan fabric than a free standing new community. As the NTIT is an integral part of the central city, it is neither feasible nor desirable to develop it as an isolated entity." (V-15)

At the present time, the majority of NTITs are in the final planning

or initial development stages. For this reason, it is difficult to assess how well they will utilize the lessons gained from previous revitalization efforts. H.U.D. has attempted to induce NTITs to internalize the lessons from past experiences by requiring:

> Although a new community need not be completely self-sufficient, it must provide in a single area the housing, social services, public and commercial facilities, and job opportunities normally associated with a city or town. In determining the degree of internal diversity for a given site, consideration will be given to adequacy of existing or projected services and facilities in the immediate area. However, the community may not consist simply of housing with a minimum of commercial facilities serving only the immediate needs of people for neighborhood shopping. Nor may a new community be predominantly industrial or commercial development, with a minimum supply of new housing.
> (H.U.D. Guidelines, p. 13) (emphasis added)

Tables VI and VII, on the following pages, provide comparative data on select NTITs and show how their emphasis on the various components of revitalization differ. These tables indicate that most NTIT developers are attempting to avoid the mistakes of the past. For example, the projects vary in size from 100 acres to 8,400 acres; and most experts feel that each will be of adequate scale to have a significant impact on the central city in which it is located. The fact that the emphasis placed on each component of revitalization varies according to the conditions in the host city and the type of NTIT being developed, indicates that the NTITs are attempting to move with the existing economic trends specific to their region.

In addition, all NTIT proposals call for a balancing of physical renewal efforts with human service programs. Whether these proposals will

TABLE VI

NEW TOWN INTOWN PROJECTS

COMPARATIVE DATA

PROJECT NAME	CEDAR-RIVERSIDE Minneapolis, Minn.	FORT LINCOLN Washington D. C.	SAN ANTONIO NEW TOWN San Antonio, Texas	PONTCHARTRAIN New Orleans, La.	ROOSEVELT ISLAND (WELFARE ISLAND) New York, New York	HARTFORD PROC Hartford, Connectic
CURRENT STATUS	underway	Final Planning	Final Planning	Final Planning	underway	public discussi final plannin
LAND AREA	100 acres	335 acres	558 acres	8,400	140 acres	ca. 5,700 acre
POPULATION						
Present	4,000 (1972)	0	3,275 (1972)	0	0	70,000
(density)*	40/acre	-	42/acre	-	-	123/acre
Projected	30,000	16,000	20,000	87,000	17-18,000	ca. 80,000
(density)*	325/acre	48/acre	130/acre	33/acre	150/acre	140/acre
PROJECTED LAND USE						
Residential %	26%	45%	26%	32%	25%	Not Available
Commercial/Industrial %	36%	7%	37%	15%	16%	
Circulation %	19%	24%	21%	20%	15%	
Open Space, public use %	19%	23%	19%	33%	44%	
HOUSING MIX (total units)	12,500	4,625	7,058	27,600	5,000	
% Low Income assisted	14%	15%	42%	-	30%	20%
% Moderate Income asstd.	29%	32%	20%	(30%)	25%	20%
% Unassisted	57%	53%	37%	70%	45%	60%
PROJECTED ON-SITE EMPLOYMENT	?	7,000	15,000	61,000	7,000	100,000 +
ESTIMATED TOTAL PROJ. COST	$40-60 million	$40-60 million	$80 million	$150-175 million	$250 million	$800 million
INSTITUTIONAL FRAMEWORK	private developer & LPA	private developer & LPA	private developer & LPA	City Public Develop. Corp.	State Develop. Corporation	Public/ Private Partne
PRESENT LAND USE	low density, residential & Vacant land	Vacant (Federal surplus land)	Underutilized (residential & commercial)	Vacant (largely marsh)	Vacant, abandoned, &/or underutilized	Northern half Hartford, inc CBD

* Gross density: Total population ÷ total project area

** -Phase I intown component only

TABLE VII

ALTERNATIVE EMPHASES ON NTIT COMPONENTS FOR DIFFERENT NTIT MODELS

	E M P H A S I S		
Jobs Component	Substantial	Some	Very Little
MODEL I	Pontchartrain	Fort Lincoln	Welfare Island
MODEL II	(San Diego) San Antonio	(Battery Park)	Cedar-Riverside
MODEL III	Hartford Process (Cleveland) (Chicago)		
Services Component			
MODEL I	Fort Lincoln	Pontchartrain Welfare Island	
MODEL II	San Antonio Cedar-Riverside	(Battery Park) (San Diego)	
MODEL III	Hartford Process (Cleveland) (Chicago)		
Housing Component			
MODEL I	Welfare Island Fort Lincoln Pontchartrain		
MODEL II	(Battery Park) Cedar-Riverside	San Antonio	(San Diego)
MODEL III	Hartford Process (Cleveland) (Chicago)		

be implemented is yet another question. Developers almost always qualify the social and human service elements of their proposals with a statement that implementation is dependent upon the financial involvement of some federal, state, or local agency. Thus, the provision of social services is not viewed as a primary responsibility of the developer. If some institutional arrangement is not devised which clearly assigns this responsibility, the probability of full implementation of the service component of the NTIT proposal is probably quite small.

The uncertainty of implementation of the social service component of NTIT developments is a manifestation of the problems of lack of governmental coordination and the inadequacy of existing local institutions to deal with the complex problems of revitalization. As both Urban Renewal and Model Cities pointed out, the success of central city revitalization efforts are dependent upon substantial political support at every level from the local citizen participants up to the federal government. As Perloff noted:

> The main organizational problem is somehow to combine the advantages of the private entrepreneur (with the relatively great flexibility, ability to mobilize resources, and organizational talent and freedom from the more obvious kinds of political pressures) with the advantages and powers of a public entity. In several NTIT projects, a partnership between a private developer and the local renewal authority has proved itself a workable arrangement, with the private developer providing the entrepreneural skills and the local agency the powers of eminent domain and land write-down, as well as access to the local, state and federal bureaucracies...a public development corporation as the entrepreneur, be it locally or state based...(may also be able to fulfill both functions). (V-32)

The problem, however, remains that even the innovative institutional arrangements referred to by Perloff and those being used by some existing NTITs have not guaranteed the implementation of the social service component of the NTIT program.

In conclusion, the fact that NTIT developers have attempted to deal with the weaknesses of past revitalization programs in their plans and proposals does not guarantee that these weaknesses will be overcome in the implementation stage. The two most pressing problems of the NTIT program continue to be inadequate funding and lack of coordination between various governmental agencies. If these problems are not addressed, NTITs may fall into the Urban Renewal mold, providing inadequate human services and simply creating enclaves of physical renewal.

Financing Central City Revitalization

All of the lessons learned from Urban Renewal and Model Cities, and the potentiality of the NTIT program mean very little if adequate funds are not available from both governmental and private sources to finance central city revitalization efforts. Perloff has noted that two factors generally constrain central city developers: "1. The cost of building in the central city is higher than the cost of building in outlying areas, and 2. The returns from Intown investment often do not compensate for the higher costs and risks." (II-55) For these reasons, it is a generally accepted fact that central city revitalization efforts cannot be carried out without substantial direct government subsidies. The governmental subsidies are necessary to compensate and stimulate private development in situations which would have otherwise been uneconomic. Past federal subsidies have taken the form of grants for land writedowns, subsidies for housing, infrastructure, interest and planning costs, loans, and loan guarantees. (V-26)

Table VI indicates that the estimated costs of the various NTIT programs range from $40 to $800 million. At present, Title VII loan guarantees have a $50 million ceiling. If Title VII funding remains unsupported by additional federal subsidies, it is highly unlikely that a meaningful NTIT program will develop. Past freezes on housing subsidies, the tight capital market, and generally poor economic picture have tended to exacerbate this problem. Experts feel that these problems could be overcome by federal initiative in the creation of a National Urban Development Bank or a major program of central city community development grants. (V-56) Meaningful action along the lines of any of these proposals is highly improbable. Although the Housing and Community Development Act of 1974 (signed on August 22 of this year) de-

monstrates a new degree of federal concern, the overall commitment of the federal government to central city revitalization efforts seems quite uncertain at this point in time. Given this situation, private developers, local governments and public development corporations must look to their own initiative to discover methods to reduce the capital and operating costs of central city redevelopment.

Select techniques for the reduction of such costs are summarized below:

1. The Use of Vacant Land: "Development of such land is less expensive than the development of built-up areas as there are no clearance or relocation costs." (V-27) This approach is limited by the availability of such parcels and their general lack of economic viability. However, the use of vacant parcels in a linked programmatic approach may be beneficial.

2. Creation of New Land: Several NTIT's are utilizing land created by diking, filling, or the use of air rights. Through these techniques, the value of land formerly unsuitable for development can be substantially increased by preparing the land for high intensity development. The problems with diking and filling are that they may be environmentally damaging. The use of air rights is extremely expensive and can only be used in areas with high economic viability. (II-57)

3. Re-Use of Under Utilized Land: Land used for low intensity or inappropriate purposes may prove viable for redevelopment efforts. Two prime examples of this type currently exist: (1) Unutilized publicly owned land such as inactive military installations; (2) Privately owned obsolete areas such as port facilities or railroad yards. The greatest problem with publicly owned lands is arriving at a 'fair market value' for its sale to a developer. However, leasing arrangements may be a solution to this problem. Obsolete privately owned lands are generally quite expensive, so the economic viability of the proposed redevelopment project must be substantial. (II-58)

4. Innovative Manipulation of Tax Laws: This technique involves encouraging investment in central city development by channeling tax benefits to private individuals and corporations. Tax shelters can be provided for wealthy investors. Capital losses can be guaranteed through limited partnership agreements, etc. The chief problem with this approach is that unscrupulous investors might take advantage of a technique that was designed to encourage investment for the public benefit. Furthermore, the federal government loses tax revenue but has no direct control on how the money is used. (II-60)

5. Tax Increment Financing: Tax increment financing allows the property taxes paid on the increased value of redeveloped property to be used to pay back the costs of public investment in the project area. This system works by fixing the assessed value of property in a renewal area prior to redevelopment and then allocating some portion of the increase in assessed valuation resulting from redevelopment to the redevelopment agency. This agency is then allowed to use its share of the incremental tax revenues to amoritize tax allocation bonds. These bonds are attractive to investors because they are exempt from federal and state income taxes and are insured by government covenants. The chief problem with this approach is that it freezes the tax base within the project area for other non-municipal taxing entities such as school districts, etc. All NTIT developers have expressed interest in this form of financing, but at present only California, Minnesota, Iowa, and Oregon state law allows this method of financing.

6. Channeling Development into Desired Areas via Planning Controls: Local governments could use their zoning and approval powers to guide central city development into desired areas. New Orleans has done this by refusing to build additional bridges across the Mississippi River, thus limiting access to outlying land. Minneapolis-St.Paul encourages concentration and discourages sprawl by using their A-95 review process. The problem is that most central cities do not have enough control over regional land use decisions to encourage the concentration of development. (II-61)

7. Internal Subsidies: Central City Revitalization efforts using the linked project approach could possibly sub-

> sidize low-income housing and human service programs by using returns which it receives on high-income, commercial and industrial land development. Returns in profitable project areas could be used to subsidize development in less profitable areas. The problem with this approach is that revitalization efforts usually do not yield high returns. (II-100)

Although the techniques described above may help to provide needed financing and lowered costs for central city revitalization, they cannot substitute for a substantial national and state financial commitment. At the most, these techniques represent a holding action which will allow revitalization efforts to continue on a limited scale until national and state policies are formulated.

Potential Roles for the State

Given the lessons from past and present federal urban redevelopment programs, it would seem that there are at least three immediate avenues through which the state might provide assistance for central city revitalization efforts in Massachusetts. First, all redevelopment programs have suffered from the lack of systematic data on the economic and social trends in the central city. Past experience has shown that it is essential to take advantage of existing trends by designing programs which move with rather than against these trends. Since other state programs are highly dependent on the need of accurate information of this type, the state could assume the role of gathering and publishing detailed systematic economic, social, and environmental data for all areas of the state. In addition to helping central city programs, such information would benefit all state planning efforts.

Second, the lack of adequate funding has been a key problem of all urban redevelopment attempts. The state could help in solving this problem through four different approaches:

1. Encouraging cities and communities to utilize tax increment financing in their redevelopment efforts. Brookline and several Massachusetts communities are presently experimenting with this technique. The local officials involved feel that the approach has great potential and that home rule powers are an adequate legislative base from which to initiate it.
2. Revise state tax allocation schedules so as to provide central cities with more money to pay for the services which they provide to a large portion of the state's low-income population.

3. Create an Urban Development Bank to make substantial long-term loans at reasonable rates to central city revitalization efforts.

4. Establish a land banking process by which the state or localities could hold land for limited periods of time until they were needed for community use. Mass. House Report No. 6488, discusses this issue in depth and concludes:

> Among the possibilities for the use of land banking are advanced acquisition of sites for public investment, i.e., schools, roads, hospitals, etc. The prime objective is to obtain the site more cheaply while forestalling price rises, obtaining the "best" site, improving the pattern of related land use, and perhaps, receiving a temporary return on the interim use of the parcel. Costs associated with the plan are the initial purchases price, servicing the debt, foregoing of taxes, management costs, and the problem of uncertainty of siting.
>
> Land banking may be used for the acquisition of strategic areas of development such as, airports, land surrounding major highways and interchanges along with mass transit stops, large open spaces, and areas of critical environmental, unique or historical importance. Public expenditures which have significant benefits to private landowners confer enormous bonuses upon fortunate investors. Land banking or advanced land acquisition can be used to distribute these benefits more fairly. Thus, when public expenditure is involved, increases in the valuation of affected land will accrue to the public.
>
> Another consideration for the use of land banking is to help to perfect the land market.
>
> > Land banks are well adapted to correct the errors and scars of the past. Scattered throughout many of our older suburbs are pockets of underdevelopment, dotted with small lots of odd sizes or occupied by vacant buildings. This collection of sites frequently adds up to an impressive total of developable land, but its present form is uninviting to developers. These odd bits of remnants can and should be assembled into parcels suitable for building. Furthermore, there are often pockets of legal blight,

> where the land has been rendered undevelopable because of problems over the estate or title. A public agency could assemble these odd pieces of land into economic plots and make them available by sale or lease to developers.
>
> Essentially, in buying important parcels of land and making them available in a planned growth strategy, the land bank would begin to impart added order to the whole process of land development and urban growth. Various strategies of acquisition would reduce the uncertainty and confusion in the land market. The results would be more stabilization of the market and the better implementation of a land use policy. Furthermore, by exerting a control over the ownership of crucial parcels of land, pricing of land would become more stable. Influence would be exerted on land speculation, and the goal of obtaining the best site for the desired purpose would become more possible.

It should be noted that the first two approaches would require no new state expenditures, the Development Bank would be loaning money rather than simply giving state grants, and land banking could actually capture the increased value of land produced by public expenditures.

Finally, the inability of local institutions to cope with the problems of revitalization suggest the need for a State Development Corporation (perhaps similar to New York's UDC). Perloff has identified the following six powers that such a corporation would need:

1. Preparation of physical, economic, social, and financial plans for the "development sectors," in relationship to broader planning for the city and region (with prior approval of the Mayor and City Council); primary responsibility for zoning, land use, and building controls within these "sectors"; and coordination and phasing of public improvements in the designated "sectors".

2. Operation as a developer with powers to buy, sell, and lease land; acquire, construct, and rehabilitate buildings and other property; and condemn, assemble, bank, and writedown land and other property.

3. Operation of public facilities and quasi-public enterprises (such as mini-buses).

4. Issuance of tax-exempt bonds and other obligations.

5. Overriding of local zoning, building, and housing codes.

6. Establishment of public, joint public-private and private subsidiaries and undertaking joint activities with existing entities. (V-37)

Bills were introduced into the General Court in 1967, 1969, and 1971 to create a state development corporation. These bills would have created entities with the powers which Perloff suggests. The major issue in these bills was not only what type of powers such a corporation should have but whether it should be responsible to an independent board appointed by the Governor (as in New York) or should be responsible to the Secretary of Community and Development and through him to other Cabinet officers, to keep its operations in line with state agency policies.

In addition, the Boston Economic Development and Industrial Corporation (BEDIC) is a local public development corporation with most but not all of the powers suggested by Perloff. It presently lacks the power to override local zoning, building, and housing codes (which may not be a necessity for a local corporation. This corporation is responsible for the Dorchester industrial park project mentioned earlier in this report. Consequently, Massachusetts has considered these alternatives and is presently making limited use of some of them.

The preceding actions are only suggestive of the things which the state might do to aid urban redevelopment efforts. In essence, the state needs to develop a series of programs which would affirm its commitment to the goal of revitalizing the central cities. These programs should encourage

(rather than constrain) localities to engage in a continuing process of revitalization and community development. In the final analysis, the success of a Central City Revitalization program is a function of two factors. First, the degree of local activity, responsibility, and cooperation which the program generates is critical. Second, the commitment of higher levels of government to the revitalization goal must be demonstrated by long-term financial and institutional support. Without these two elements, revitalization efforts will have only marginal effects on the city. Given the fact that the problems of the central city are integrity linked to the pressures on outlying suburbs and rural areas, the need for state and federal action is clearly defined.

III. MINUTES OF THE 1975 LAND USE SUBCOMMITTEE MEETINGS

February 13, 1975 Meeting

Topic: Innovative Land Use Planning and Regulatory Activities in Other States

SUMMARY: The meeting focused upon three issues:

I. Recent land use legislation in Florida

II. The implications of the Florida experience for Massachusetts

III. Future work of the subcommittee

I. FLORIDA LEGISLATION

Dan O'Connell: In the early 1970's, several problems in Florida pointed towards the need for land use legislation. Rapid migration from the North was placing stress on the ability of the local governmental systems to provide adequate public services (i.e., schools, roads, sewers, etc.) for local residents. In addition, a severe water shortage throughout the state dramatized the growth problems. The governor appointed a committee to draft legislation. Four bills finally resulted:

1. The Environmental Land and Water Management Act
2. The Comprehensive Planning Act
3. The Water Resources Act
4. The Land Conservation Act

The major bill was the Florida Environmental Land and Water Act of 1972. Modelled on the American Law Institute code, it set up two land use techniques: 1) areas of critical state concern (not to exceed 5% of state), and 2) developments of regional impact: of such a size that would affect more than one county. About 75% of the state had no land use controls whatsoever. It was deemed necessary to have someone administer the new laws. Because there were no regional planning agencies, the state had to pass a separate act--the State Comprehensive Planning Act of 1972, which set up a division of state planning in order to implement these acts. In the land management and state planning acts, there was now language to provide for the designation of regional planning agencies to do regional impact reports.

Guidelines for development of regional impact would be recommended by the committee, approved by the governor, and then go to the legislature. The legislature used this technique to insure that

no guidelines on regional impact would be adopted by administrative order.

The third act, called the Water Resources Act of 1972, directed development of a state water use plan, putting all water resources under state regulation. The voter-approved Land Conservation Act of 1972 authorized $240 million in bonds for state acquisition of environmentally endangered lands and recreational lands. Responsibility for implementing this act was with the Department of Natural Resources. The first funds were spent in the Cypress area. $45 million was appropriated to be combined with federal funds. Funding in the first year was very low.

With the implementation of these four acts in Florida, all kinds of constitutional and legal questions arose (rights of private property, political pressure to fight environmental regulations by lawsuit, etc.). The governor appointed a Property Rights Commission. Taking real property off tax roles made the towns angry. The Commission was being forced politically to set up new mechanisms for shifting payments of compensation affecting large groups of people simultaneously.

The latest issue is one-stop permits. Developers are tired of 18 month waiting periods. An environmental reorganization bill is now under consideration. This would put state planning under the Department of Natural Resources, thereby avoiding five or six state agencies to review applications.

Development of regional impact technique is applied to only about 40 percent of the state where local zoning or subdivision laws are in effect. If a DRI is planned in a jurisdiction with such controls, the new law provides specific requirements for public notice and hearings. The regional planning bodies have 30 days to prepare an impact review and recommendation which the local government must consider before deciding whether or not the DRI will be approved. If a DRI is planned in a jurisdiction without such controls, the local government has 90 days to adopt zoning regulations or give the state an opportunity to declare the area one of critical state concern. A limitation of 5 percent of the state was adopted so that the governor would have to focus on narrow choices of the most sensitive priorities.

II. IMPLICATIONS OF FLORIDA LEGISLATION ON MASSACHUSETTS

Lawrence Susskind: Massachusetts and Florida share many of the same issues regarding critical areas of state concern. Two approaches in defining critical areas are: 1) putting a percentage figure on the amount of land in state where the person vested with the power to define the critical areas will be allowed to do this, and 2) giving the local governments first crack at defining critical areas within their boundaries (as done in Colorado), and then determine what is common to all municipalities.

The Environmental Policy Act allows some provisions for how to define and who is to define large-scale development, should there be a more careful review of it.

In most states that have enacted comprehensive legislation, there has been a demand for action from either tremendous growth pressure that localities can't manage, or crises such as oil spills. We have neither right now in Massachusetts, so why should the legislature support it? Economic development would be a good theme for Massachusetts, as this might get the legislature to act. Communities should induce development.

The issue of a state planning operation requires more attention. The governor is considering the establishment of an office of state planning with some power. Centralized planning must be related to land use operations. Serious thought about what model of central planning this state will adopt is necessary.

Dan O'Connell: It is necessary to focus on the real problems at the moment: Florida is keyed to the automobile. The problem of imported oil will lead to greater problems unless we have more efficient planning. This is a perfect time for better forms of regional development design.

Alan Kaufman: (Conservation Law Foundation)

In that respect, one aspect of the problem consist of outer continental shelf drilling. A mandate of national interest threatens Massachusetts. The on-shore impact is devastating. On-shore de-

velopment brings jobs, which brings housing growth, transportation problems, etc.

Lawrence Susskind: The communities are concerned about providing more or improving public facilities. There is a problem of growth management in some small towns and a problem of how to encourage growth in others. Is there enough talk about managing local growth so that the bill should be keyed to that?

Alan Kaufman: Any bill that makes sense would have to respond with different thresholds of regulations. Community growth could be handled by a new zoning enabling act. Regional responses to growth decisions are beyond the control of any one municipality.
Land use has been considered mostly as a conservation technique. The Boston Chamber of Commerce is using land use as a way of getting things done, rather than preventing accomplishment. The concern in local communities can spark the legislators' interest. Perhaps we should describe legislation as one that helps guide growth.

Lawrence Susskind: In Massachusetts, regional agencies usually represent groups that protect the interests of localities. What role does the middle government in Florida play?

Dan O'Connell: Florida uses the state comprehensive planning act, which gives the division of state planning the authority to adopt, for the purpose of uniformity throughout the state, certain boundaries that everyone would use. The decision was to use traditional county lines. The division of state planning agreed to give money to the 7 out of 10 groups that would convene and make environmental reports.

George Brown: The Chamber of Commerce is proposing regional government for the Boston area. Franklin County's bill is a step towards more regional institutions for the county. How do these activities affect our view of regional bodies that might be proposed in a new bill?

Lawrence Susskind: Do we have a system of substate regional planning with which we are sufficiently secure at this time to use in a land use bill?

Susan Lutwak: (MAPC)

The boundaries under which planning agencies operate should be addressed. MAPC is presently working on a regional land use pattern.

Joel Brenner: If developing regional capacity means only adding another set of strictures, we will lose home builders' support. They want a speedy way of obtaining development permits. What powers need to be given to a regional body?

DiLuzio: There will have to be a strengthening of legislative mechanisms in order to make municipalities responsive to proposals by the existing regional council.

Focus upon two categories:

1. What is the objective of state use planning?
2. What institutional mechanism will put the objective into effect?

III. FUTURE WORK OF THE SUBCOMMITTEE

Saltonstall:

The governor plans to meet with the Growth Commission as a group February 27, 1975, 9:00 A.M. It has been suggested that if the Growth Commission is interested in developing legislation, the three subcommittees must come together and develop something that can be mutually agreed upon. Perhaps this could be done by creating a steering committee of the commission, including the heads of the subcommittees and two or three people working with them. In addition, it is obvious that the subcommittees, themselves, will have to do some outreaching into the communities if a legislative endeavor is to be successful. Finally, I have been asked to announce that our meeting on March 13 will be devoted to discussion of the problems of agricultural and open space land uses.

February 27, 1975 Meeting

Topic: Summary--Special Commission Meeting with Governor Dukakis

GOVERNOR'S STATEMENT (See text of Statement following these minutes)

On February 27, Governor Michael Dukakis spoke to the Special Commission on the Effects of Growth Patterns on the Quality of Life in the Commonwealth and the Subcommittees on Growth, Land Use, and Demographic Services.

Governor Dukakis asked the Legislature to cooperate in the development of a "comprehensive growth and development planning program for Massachusetts" and announced the creation of the Office of State Planning to coordinate the program. He said a state master plan was necessary "if we are to provide economic growth and environmental protection--both of which are critical to the future of the Commonwealth."

Dukakis said he was testifying, not in favor of new legislation, but to enlist the Legislature's help in defining the growth policies of the state. According to Dukakis, the planning process would:

--define the state's long-range goals;

--provide a base for evaluating the impact of major state decisions;

--serve notice as to where economic development should be encouraged and where open space should be preserved.

While the Office of State Planning is formally under the Executive Office of Administration and Finance, its director will be an ex-officio member of the cabinet and would report directly to him.

The planning office, according to Dukakis, "will be neither costly nor create a new layer of bureaucracy. On the contrary, we will try to streamline existing planning functions which are now spread among numerous state agencies. From the existing pool of planning personnel, I will direct that a number of individuals work under the guidance of the planning office."

Dukakis said the state master plan will not be developed "by a few professional planners sitting in Boston, but will be prepared only after cooperation among local communities, regional planning agencies, a citizens' advisory board, and various branches of state government."

Among the state decisions to be guided by the master plan are:

--state highway and mass transit construction will be built to encourage the residential and economic development goals outlined in the plan;

--allocation of funds for purchase of open space will be made, according to priorities in the plan;

--all other items in the annual outlay budget will be evaluated according to the plan.

Dukakis expressed great expectations for the new office and the hope that members of the Special Commission will actively participate in the development of a more comprehensive approach to growth policy.

DISCUSSION

In response to John Ames' question of whether the office would draw up a map or develop a process to evaluate locations for designated growth, Dukakis stated that "the office will try to create a clearly defined picture of what we want the state to look like in five, ten or so years. This requires a designation of areas for certain development, but it does not mean state-wide zoning."

As an example, Dukakis cited the previous state transportation policies that have encouraged the construction of expressways without concern for the secondary consequences. This destroys older urban communities by encouraging development to move out of the city. "If we don't want that process to continue," Dukakis replied, "we have to be specific about where we want development to take place."

Professor Larry Susskind reported that land use policy must be locally oriented. Susskind's group has come up with a plan to enable local communities to define goals. The Office of State Planning could monitor how localities define land use problems. It could also serve as a link between local communities, regional planning agencies, and the state level.

John Barrus expressed the concern over the loss of agricultural land, and also stated that as it becomes economically unfeasible for agriculture support industry to remain in the state, farmers lose services essential to their industry.

The Governor expressed concern with this issue and said the Office of State Planning would have to look into the whole food question.

Statement of Governor Dukakis to the Special Commission on the Effects of Growth Patterns on the Quality of Life in the Commonwealth--February 27, 1975

The following is testimony by Governor Michael Dukakis before the Legislative Commission on the Effects of Growth Patterns on the Quality of Life in the Commonwealth:

I want to thank Representative Wetmore and Senator McKinnon for their invitation to appear before the Commission on Growth Patterns today to discuss the steps that I have taken to initiate a comprehensive growth and development planning program for Massachusetts. The lack of a comprehensive plan has been the cause of many foolish and wasteful decisions by state government in the past.

For too long major state decisions on physical and economic development have been made in a vacuum and on an ad hoc basis.

State development decisions have major immediate and long-term impacts on the areas in which they are located. These impacts must be given adequate consideration; both when the state itself makes decisions about public facility siting and as it reviews private proposals.

In this time of economic hardship, we need to plan carefully for economic and physical development in Massachusetts. We need to be able to tell industry precisely where it is wanted in the Commonwealth. We must be able to provide economic growth and environmental protection -- both of which are critical to the future of Massachusetts. No longer can we allow wetlands in major water supply areas to be filled in for industrial locations while we fail to encourage industry in more suitable areas; no longer can we plan college campuses without assessing their impact on surrounding communities; no longer can we locate state buildings in areas which do not need additional office building; no longer can we make any of these decisions without planning them in a unified office of planning.

In short, state government needs, as the members of this commission realize, a comprehensive plan for Massachusetts. We need a comprehensive plan to give those of us in state government long-range direction for the state; to help us evaluate the impact of major state decisions; and to indicate for all concerned where development will be encouraged.

In response to this need I have established this month a new Office of State Planning. This Office will have principal responsibility for comprehensive planning in all state activities. While the Office of State Planning will be formally located in the Executive Office of Administration and Finance, planning is so important that the director of this Office will sit as an ex officio member of the Cabinet and report directly to me.

The Office of State Planning will function in the following way:

1. The Cabinet will be responsible for setting state policies for growth and conservation. Goals for residential and economic distribution will be prepared, based upon the agreed policies. The Cabinet will, in addition, ensure that policies for housing, economic development, transportation and environmental quality are compatible with each other and with the long-term needs of the state.

The Office of State Planning will serve as staff to the Cabinet in this policy-making capacity. The Office will help the Cabinet to evaluate the impacts of alternative policies and enable the Cabinet to make well-informed choices about policies for Massachusetts. Input from a state-level citizen advisory group will also be sought at this point.

2. The Office of State Planning will take the initial policies developed by the Cabinet and, in a close working relationship with local communities and the state's regional planning agencies, develop them into a statewide state comprehensive plan. I view this portion of the plan development as a two-way street. The state comprehensive plan will be developed on a region-by-region basis. It will reflect both state policies and the desires and expectations of the people living in the various regions of the Commonwealth. To attain this goal, the Office of State Planning will work with the municipalities and the regional planning agencies of the Commonwealth to develop strong citizen participation in the preparation of the state plan. A variety of means should be used: public meetings, newsletters, questionnaires, seminars, and perhaps other more innovative techniques. Massachusetts' comprehensive plan cannot be developed by a few professional planners in Boston. The planning programs of other government visits and the involvement of people in every part of the state will make the state comprehensive plan something in which the people of this state feel they have a stake.

3. Finally, the fully developed plan will be presented to the Cabinet and to me for discussion, possible further modification and formal adoption. I hope that members of this committee will also be a part of this process. Procedures will be adopted to update the plan on a regular basis.

What then? Other states have comprehensive plans -- though not always developed through such an open process. The difference is that Massachusetts' comprehensive plan will not sit on the shelf -- honored more in the breach than in the observance. All major state decisions on development and conservation will be guided by the state plan.

For example:

--state highway and transit systems will be built to encourage the residential and economic development goals in the plan;

I have not come before this commission today with a request for new legislation. I believe that the planning program that I have described to you can be established under the existing authority of the Executive Branch. I would value highly, however, participation by members of the Legislature in the work of the Office of State Planning. The considered opinions of the members of this commission would be invaluable to me and to members of the Office of State Planning as we prepare a comprehensive plan for the Commonwealth. I would suggest that a working relationship be established between this commission and the Office of State Planning. I would propose that the commission take an active role in the articulation of growth policy issues. Regular and substantial input should come from the members of this commission and its subcommittee in the development of the comprehensive plan for Massachusetts. I would propose that the Office of State Planning make regular presentations to this commission as drafts of various parts of the state plan are prepared. I would hope that the members of this commission would make extensive comments on those presentations.

I am encouraged by the interest of the members of this commission and its subcommittees in comprehensive planning for Massachusetts. I believe that together we can develop the kind of informed, long-range decision-making for this state that will be a model for state governments around the country.

Thank you.

--allocation of funds for purchase of open space will be made according to the priorities in the state plan;

--siting of all new water pollution treatment facilities will be guided by the plan;

--all other items in the annual capital outlay budget will be evaluated according to the plan;

In addition, I will develop methods by which state agencies with regulatory or permit powers can use those powers within the context of the state comprehensive plan. For example, I would hope that the following state regulatory powers could be guided by the state plan;

--Department of Public Works curb cuts on state roads;

--Division of Water Pollution Control discharge permits into surface waters;

--Wetland permits;

--New hospital siting under the certificate of need program; and

--Energy facilities siting by the state energy facilities siting commission.

The Office of State Planning will assist all affected state agencies in evaluating their decisions in the light of the state comprehensive plan. No major development will be submitted to the Governor for approval until it has first been reviewed by the Planning Office.

Perhaps the best way to describe the Office of State Planning is to say that it will be the state's chief land use planning agency. As this commission knows full well, balanced growth and development really comes down to how we decide to use our land in the Commonwealth. I want the most comprehensive and practical advice on land use that any state government has ever had. I am relying on the Office of State Planning and its network of regional planning agencies to give me and the Cabinet that advice.

Programs which result primarily in development of land use recommendations (such as federally supported land use programs) will be the direct responsibility of the Office of State Planning. In addition, it is my intention that when comprehensive land use planning or related population or economic development studies need to be done for on-going state agency programs, the Office of State Planning will prepare these comprehensive planning elements for the on-going programs.

I want to emphasize that the creation of the Office for State Planning will not be yet another excuse for inaction. In fact, it will be precisely the opposite. I hope that careful planning will eliminate the kind of pitched battles between state agencies, citizens groups and private developers which have been so costly here in Massachusetts. I hope also that it will end once and for all the kind of endless bottlenecks which have confronted so many private developers in Massachusetts and which have led some of them to become so frustrated that they have decided not to locate anywhere in Massachusetts. The creation of a strong Office for State Planning, overseen by a Governor who is deeply committed to its work, will finally provide environmentalists and those interested in economic growth with a framework within which they can work together toward the goals that are so important to all of us.

I know this commission has been seriously investigating the need for new land use regulatory legislation for Massachusetts. I would welcome suggestions for such new legislation from the commission and would consider them carefully. We do need to keep in mind, however, that Massachusetts already had a number of effective pieces of land use regulatory legislation on the books. It is my initial intention through the Office of State Planning to try to make that legislation work. If, after that attempt, we discover some gaps in our existing body of land use law, I would then support the passage of additional land use legislation.

There have been some doubts expressed about this new Office of State Planning. Isn't it simply another layer of Bureaucracy? Won't the new Office be costly? The answer in both cases is "No". In its various agencies the state already employs a large number of professional planners. The work of the Office of State Planning will be a cooperative venture with all state agencies. It will not attempt to "dictate" policy to anyone; instead, it will cooperate with everyone for the long-range good of the entire state.

From the existing pool of planning personnel in state agencies, I will direct that a number of individuals work on state planning as a coordinated venture under the guidance of the Office of State Planning. Thus, each agency will have representation in the work done by the Office of State Planning and Massachusetts' comprehensive plan will be developed without the hiring of additional state personnel.

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The Commonwealth of Massachusetts
Department of Agriculture
Leverett Saltonstall Building, Government Center
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Agenda for March 13 Meeting of Land Use Sub Committee

TOPIC: Land Use Planning from the standpoint of those who use land in the production of natural resources.

MODERATOR: John Barrus
Mass. Farm Bureau Federation
Former State Senator
Reorganization Task Force on Agriculture and Land Resources.
Irreversible Land Use Decisions.
Report on findings of the Governor's Commission on Food.

AGRICULTURE: Dr. N. Eugene Engel
Professor of Agriculture and Resource Economics.
University of Massachusetts, Amherst
Economic significance of Massachusetts Agriculture
Loss of Agricultural Land
Programs in other States
Report from National Committee on Agricultural Land.

FORESTRY: Dr. John H. Noyes
Professor of Forestry & Wildlife Management
University of Massachusetts, Amherst
Economic significance of Forest Products in Massachusetts
Multiple benefits of Productive Open Land
European Practice

EARTH MATERIALS: Speaker to be announced
Economic significance of sand, gravel, stone and other minerals.
Planning needs
Prevention of abuses

SUMMARY: Warren K. Colby
Land Use Division
Department of Agriculture
Former Executive Director
Mass. Citizens to Save Open Space
Methods: Grand schemes vs. step by step approach.
Substantive considerations in Land Use Planning.
Political Considerations.

Discussion:

March 13, 1975 Meeting

Topic: Land Use Planning: Open Space, Agricultural and Forest Lands

SUMMARY: The meeting focused on five issues presented by the following people and concluded with a discussion of future subcommittee meetings.

I. John Barrus (Mass. Farm Bureau Fed.)--"crisis" conditions in the agricultural industry

II. Dr. N. Eugene Engel (U. Mass.)--economic analysis of farm problems in Massachusetts

III. Dr. John H. Noyes (U. Mass.)--economic significance and benefits of open space and forestry in Massachusetts

IV. Mr. Sinnott ( )--economic significance of sand and gravel in Massachusetts

V. Warren Colby (Dept. of Agriculture)--importance of open space land in the quality of life

VI. Discussion of future subcommittee meetings, specifically the discussion of land use bills introduced this session.

I. BARRUS (See Statement in Appendix)

What is sometimes overlooked in discussing economic wealth is that agricultural production is the creating of new wealth, dependent solely upon good farmland. There are too many examples of good farmland going out of agricultural production and into a condition which will preclude it from ever being put to agricultural use (i.e., shopping centers, housing developments, etc.). Any planning program related to land use should make serious efforts to eliminate irreversible conversion of farmland.

The Citizen Task Forces on Environmental Reorganization, in 1972, identified the following problems of farmland:

1) Farmers are induced to sell productive farmland by a combination of high taxes and prices offered for their land

2) Loss of these lands reduces the value of suburban development

3) Governmental regulations can lead to loss of good productive land

4) Regulatory schemes for industry does not take into account special circumstances of agriculture, while other schemes are overly restrictive

Thus, it becomes equally important to see that regulatory action by government, local zoning regulations and land proposals by governmental agencies do not result in a negative reaction to preserving good farmland.

A report from the Governor's Commission on Food, in 1974, discussed the problem of conversion of agricultural land to other uses. Their proposed solution was the development of a comprehensive land use plan for Massachusetts that incorporates the agricultural preservation concept and provides tax benefits for maintaining the land, and tax penalties for changing the land from agricultural to urban use. To accomplish this proposal, the following steps were suggested:

1) A cabinet level land use policy council, created with the responsibility for developing a comprehensive land use plan for Massachusetts within three years;

2) Conservation district boards of supervisors, requested to place top priority on preparation of county agricultural land use capability maps to consider proposed changes in land use, and to preserve the best agricultural land in a way that protects the equity of the land owners.

Maintaining a viable agricultural industry in this state is necessary. Crisis conditions exist, making it imperative to come to grips with the problems now.

II. ENGEL

Statistics on the number of farms in Massachusetts from 1860-1973 show a significant loss in the amount of farm acreage. In the last five to six years, there was approximately 80,000 acres of farm land lost. In 1973, there were 5.7 thousand farms, a little over 700,000 acres of land in agriculture. We are losing about 200 farms per year due to difficulties in supporting profitable farm supply industry, difficulties in finding veterinarians and feed supply stores. Existing farms are expanding in size and

small farms are disappearing. (See Tables on following pages) The total gross income of agriculture in Massachusetts is approximately $190 million. About $145 million of this is in food production, tobacco and small amounts of wool. Processing is a $1.6 million industry. Wholesaling is about a $3.1 million industry. Agricultural industry employs 16,600 people, excluding family workers. Processing employs 33,000, wholesaling employs about 16,000, food service employs 88,000, retailing food industry employs about 63,000 workers. There averages approximately 3 workers per farm and there is a loss of 600 farm workers per year.

Vermont produces 124% of what it consumes, R.I. 13.5%, N.H. 27%, Maine 108%, Conn. 14%, and Mass. 16% (fish included).

Twelve northeastern states are actively involved in state land use planning. All have farmland assessment legislation.

Two major items are presently being developed:

1) Concept of transferrable development rights
2) Purchase and lease arrangements or outright purchase

The national land use task force of the U.S. Department of Agriculture explored alternative resource management methods under five gneral categories:

1) Public ownership--outright purchase of land, transferrable development rights
2) Public regulation--zoning, subdivision regulation, health, building and electrical codes
3) Taxation--property, farmland, inheritance
4) Techniques or methods--subsidies, tax incentives, regulatory practices that will alter market price
5) Public investment--roads, water systems, solid waste disposal

Discussion:

Saltonstall:

The idea of development rights is difficult to implement. How does one decide how many rights are designated for each piece of land?

Engel: There must be a state agency to handle development rights. The usual requirement on development rights is the density of population.

Table 1

Number of Farms, Land in Farms, Massachusetts

Year	Number of Farms[1]	Land in Farms[1]
	(thousand)	(million acres)
1860	35.6	3.3
1880	38.4	3.4
1900	37.7	3.1
1920	32.0	2.5
1940	31.9	1.9
1960	13.0	1.2
1965	8.7	.94
1966	8.1	.89
1967	7.5	.86
1968	7.0	.82
1969	6.5	.78
1970	6.3	.76
1971	6.1	.74
1972	5.9	.72
1973	5.7	.70

1. Source: U.S. Abstract of Agricultural Statistics and Massachusetts Agricultural Statistics (1972 and 1973).

Prepared by N.E. Engel, Department of Food and Resource Economics, University of Massachusetts, Amherst.

Table 2

Value of Farm Land and Buildings, Massachusetts*

	Per Acre Dollars	Per Farm Thousand Dollars	Total Value Million Dollars	Building Value Million Dollars
1965	393	43.8	334	139
1966	421	47.6	345	140
1967	449	51.7	355	141
1968	479	56.2	364	143
1969	514	61.8	376	146
1970	565	69.4	396	152
1971	623	76.7	430	164
1972	702	86.9	472	177
1973	799	99.5	522	194

* Source: Farm Real Estate Market Developments, USDA.

Prepared by N.E. Engel, Department of Food and Resource Economics, University of Massachusetts, Amherst.

Table 3

The Retail Value of Food Produced as a % of the Retail Value of Food Consumed in New England (includes seafood)

State	Value of Production as a % of Value of Consumption
Connecticut	14.2
Maine	108.3
Massachusetts	16.1
New Hampshire	27.5
Rhode Island	13.5
Vermont	124.0
Total	27.9

Source: Census of Agriculture, National Marine Fisheries Service, Bureau of the Census, Economic Research Service, USDA

Saltonstall:

Has the system worked in any foreign country?

Engel: Perhaps in England it has been successful. Sweden has an easement type arrangement.

III. NOYES (See Mass. Forest Facts in Appendix)

Forest land is a renewable resource. Approximately 60% of the state is woodlands. About 13% is under public ownership (state forests, MDC, etc.). 87% is under private ownership. Historically, owners have been farmers, but this is no longer true. Present owners do not have to rely upon income from the land for their livelihood. If we are going to manage the land, we will have to manage it in their interests.

Massachusetts has 100,000 acres in tree farms and about 3½ billion board feet in timber. Red oak and pine are considered very good quality wood. Massachusetts harvests about 115 million board feet annually, which just about equals the growth. Trees have multiple uses such as watershed protection and are of recreational value. The slides shown of forest use in Europe reveal that there is a concern for the preservation of natural beauty. For example, trees are used to frame views of open fields and forests. In Sweden, there is a program of land amalgamation. One owner might have a farm in one location and another piece of land in another location. Voluntary exchange of land for farm operation is promoted by the government, which, by buying appropriate pieces of land and holding them in a land bank, can effect these desirable exchanges.

Denmark is entirely zoned into 1) existing towns and villages, 2) potential development, 3) agricultural land, and 4) recreational land. There can be an exchange of the land use among these zones, but only by permission of the local planning authority. If the land use is changed, there must also be permission from the local planning authority.

IV. SINNOTT (See Table on following page)

The value of minerals in Massachusetts (clay, sand, gravel, etc.) is over $70 million per year in industry. Much sand and gravel

Table 4

Mineral Production in Massachusetts[1]

Mineral	1973		1974[p]	
	Quantity	Value (thousands)	Quantity	Value (thousands)
Clays----------thousand short tons---	217	$404	186	$377
Gem stones----------	NA	5	NA	5
Peat----------thousand short tons---	2	78	2	78
Sand and gravel----------do----------	18,743	26,910	17,806	33,831
Stone----------do----------	8,580	28,738	8,190	32,378
Value of items that cannot be disclosed: Other nonmetals----------	XX	3,547	XX	3,820
Total----------	XX	59,682	XX	70,489

p Preliminary. NA Not available. XX Not applicable.
1 Production as measured by mine shipments, sales, or marketable production (including consumption by producers).

resources in eastern Massachusetts have been depleted. There are large quantities in western Massachusetts, but there is little demand for it.

The mapping programs of the state (i.e., bedrock, soil, ground and surface water maps, etc.) provide only basic data, and the information is not always distributed to the people who might make use of it.

Sand and gravel deposits extend out under the ocean. In the past two years, the state has funded research on offshore gravel deposits from Newburyport to Scituate. Provisions have been set up to regulate these deposits. The state, however, would need a dredge going every day and dock space to make it economic.

Discussion

Saltonstall:

Why hasn't the coal in the Mansfield area been mined?

Sinnott: It has been mined for the past 100 years in small quantities, but it has been done with crude machinery. Pumping problems exist.

Saltonstall:

Pertinent to this aspect of land use are the questions of where to locate shafts and transportation and what to do with tailings.

Sinnott: As soon as the tailings are removed, they would be pulverized and replaced under ground. There is no need to have any on the surface; farms could still operate on the surface.

Ventresca: Would you favor state control of mineral extraction?

Sinnott: Yes, if it were reasonable with certain minimum conditions--one set of regulations that guarantee reseeding of the area within one year. Even the sand and gravel industry supports this minimum regulation so they will avoid the multiplicity of town by-laws.

V. COLBY

One of the less tangible resources we have is the "New England Scene--Currier & Ives." Environmental and societal benefits of open space land have importance in the quality of life in Massachusetts--much beyond what the statistics indicate. Appeal as to a place to live and work is an important concern. The first step

in any land use process is to protect productive land by categories. If land is unproductive for other purposes, it could be turned over to developers.

VI. DISCUSSION OF FUTURE SUBCOMMITTEE MEETINGS

Saltonstall:

At the next meeting, we will discuss bills introduced last year and this year. I do not sense a legislative mandate for strong legislation this year, as we do not have one from the Governor. What steps could this group take this year to encourage more legislation next year? The community goals idea is plausible if we can stimulate the communities.

Brenner: A number of proposed bills are concerned with regional zoning. It is important to have your input as to proper criteria for such approaches. A system of regulations that would not entail compensation is an important issue. There would be regulation, but not exercise of eminent domain.

Barrus: In reference to your ideas on zoning is something the courts have said you cannot do.

Brenner: There are other land use policies that have been proposed which are merely regulation and not outright takings.

Saltonstall:

They are not near enough to enactment to be of good service to us.

Brenner: Regulation like that is a possible direction on which this committee could focus. Sanctions short of outright taking of development rights are worth our investigation.

Barrus: N.J. and Conn. policies are dealing with development rights. They do not impose additional regulations that preclude a farmer from making a profit.

March 27, 1975 Meeting

Topic: Subcommittee Recommendations to the Wetmore Commission on Proposed Land Use Legislation.

Ames: The choice we face is whether to go ahead with legislation or wait another year. The land use issue is not understood by the Commonwealth and the Legislature. Therefore, legislation will probably not be enacted this year. If one accepts the fact that legislation dealing responsibly with land use is not going to pass, we should draft a bill which significantly addresses the issue of land use, and use that bill as a mechanism for education for the first year. Then establish our direction for the subsequent years. The substance of the bill is not critical, as any legislation is subject to amendment. We should draft a bill which is broad-based and addresses the issue in one way. Something based on the lowest common denominator or what is generally acceptable in a political sense will be a mistake in the long run.

A meaningful bill deals with two elements: developments of more than local significance, and regional planning concerns. It would be similar to the American Law Institute approach, adopted by Florida.

Saltonstall: A meaningful bill includes both defining certain areas of critical planning concern and enumerating decision-making responsibilities.

Gianturco: In terms of public education, is it better to have a single bill rather than a number of approaches?

Ames: We could use either; however, a large number of bills (more than three) would diffuse the educational impact.

Gillette: I feel we need a bill that will pass and be educative as well. We should discuss a bill without the title of land use, but that would require local input. Serious planning should begin at the local level, and this preliminary data would go

into a central planning agency. I can see no difficulty in getting this kind of legislation passed.

Ventresca: I agree with Gillette with the exception of one point--there will be no end result unless some mechanism for state and regional decision-making is included. I would put it all in one bill, as it would be politically acceptable and more than a collection of information.

Dwinnell: I agree with Gillette. The Vineyard bill was passed because the officials there were in agreement. A land use bill will have to be very simple and basic in the beginning, and then we can add to it gradually.

Lane: I am concerned about the local input. Maintaining local initiative will be difficult unless there is some incentive. My legislation provides financial incentives.

Saltonstall: I concur.

Carter: I also agree. However, we might also think of several bills which might deal with different aspects of the land use problem.

Gray: I believe we should consider all elements in one bill.

Fegan: I suggest a comprehensive rather than piecemeal approach. I respect local and regional points of view, but we are dealing with a state issue. We must prepare for national legislation. Such a project could focus on education. If the state describes its role, then we can obtain local and regional input, but the state should establish its policy, first. There is a tremendous amount of federal money coming into Massachusetts for various land use purposes. We should utilize it.

Barrus: One basic premise should be established--compensation for taking of equity. Is there to be a state land use plan to do it? If there is to be a program for payment of equity, one must decide how it is to be done. If no payment is available, a very limited land use plan should be accepted. New Jersey and Connecticut have a tax on real estate transfers. A solid, knowledgeable plan cannot exist until information is gathered. The Governor's proposal for planning in A and F could gather this information.

Ventresca: Information gathering is unnecessary for legislation. The process is our concern.

Lee: The coastal zone process is underway. We have a technical staff and a three-year program to analyse information and develop recommendations. Why couldn't something like that be done state-wide?

Gray: I worked with constituent groups on the zoning enabling act. We need maps, as Connecticut has used, in dealing with open lands, water supplies, etc. Communities should say where their prime interests are, and this information should be sent to state and regional agencies.

Susskind: The way we define the problem is what people relate to. What is the land use problem? We could have one bill that gives us a handle, but we need to be clear that we are talking about a bill that does several different things. There are five different problems:

1. Helping communities deal with problems of managing growth.
2. Unique environmental resources that are of state-wide concern.
3. Developments of more than local concern--power facilities, large-scale developments.
4. Series of state-level activities that have impact on land-use: i.e., job subsidies, housing subsidies, transportation, etc.
5. The Governor's interest in an economic and physical development plan for the state. Developing a process for formulating it from the bottom up.

I tend to feel that we will never get five bills. We need one thing that moves in the right direction. There are three ways to accomplish this:

1. Write a bill that says we shall have a plan. I do not think it will work (although Hawaii did it).
2. Think of a mechanism for controlling growth and solving problems. Mandating mechanisms does not put them to work on problems.
3. Design some process that moves from the bottom up. This enables communities to get to work and enables them to concen-

trate on the land use problems that they feel are most important. Localities must face up to the fact that there are some problems which are regional. Unless each level has a chance to surface its problems, then we have not done our job. There should be a growth management bill for the Commonwealth that goes from the bottom up. We must get each level working toward a coordinated approach.

DiLuzio: I concur with the need for one comprehensive bill. I agree with working from the bottom up, in theory, but this may be an endless process. Sometimes, it is necessary to work from the top down.

Albright: Representative Ames, do you think that your bill is inconsistent with the Governor's approach? What is his attitude toward your bill?

Ames: My bill takes a different approach from the Governor's outline to us. I think the Governor is talking about mapping. My bill is a process instead of mapping. I think the Governor is committed to a responsible approach to land use, and that he would go along with a process approach if the legislature adopted it. Even a mapping approach requires legislation.

McClintock: The role of mapping and data is the end of the process. If you leave everything to local communities, nothing significant will happen. We can get a process at the same time--Martha's Vineyard is an example. This same general approach can be used elsewhere. People, in referendum, would probably vote for it.

Gianturco: We need to sort out what we are trying to do. Do we want to do groundwork and have no bill presented? Do we want one bill, or several? Do we want strong or weak bills? I asked Constantinides to report briefly what he had done in the land use project funded by HUD.

Constantinides:

We used the centralized and decentralized approaches, simultaneously. The state should formulate guidelines for regional planning programs. Regions should have the responsibility to develop regional plans. Localities should have power to develop

plans for open space according to the guidelines of the state; localities should not develop plans of their own, without adhering to state guidelines. We have proposed legislation for a land management system. It establishes a land use board at the state level within A&F. It works closely with the Office of State Planning. It reviews regional and local plans, and it establishes standards and criteria for designation and regulation of specific areas of development. Developments of regional significance are retained by regional planning agencies, who are given an option to establish themselves as regional land use commissions within a 5-year period. Regional land use commissions develop regional plans which are certified by the state. These commissions have the power to designate areas of critical concern. This establishes guidelines for localities to develop open space plans, using a horizontal system (vertical system would involve legislation). The regions can decide in five years. After five years, the state will establish such a commission if the region has not acted.

Saltonstall: Does this approach take into account the need to streamline the permit-granting process? I am convinced that, from the point of view of the state's economy, a "one stop permit" mechanism may be important in certain instances. We should listen to local constituents, in order to avoid a fear of planning without knowing what it would accomplish. We must also engage in a public education process.

Carter: Should we file an interim report?

Saltonstall: We should try to generate community interest by asking them to participate. We need a bill asking communities to state their growth management goals, problems and priorities, and their definitions of areas of critical planning concern, and developments of regional impact.

Gianturco: If a weak bill is passed now, then stronger legislation will be difficult to get passed in the future.

Susskind: I am also interested in a strong bill, but the way to get to that bill is to mandate and provide resources for local and regional input. Given this input, and an evaluation by the Office of State Planning, we could then require that a temporary commission, made up of legislators and cabinet-level executive officers, draft a bill that would take account of both state concerns and local and regional priorities.

Carter: If a weak bill is passed initially, which is what Vermont did, it signals the opposition to prepare for a stronger bill presented in the future. The opposition would be organized against it, and defeat it, which eventually happened in Vermont. Therefore, I suggest that we have one significant bill. It is important to have our goals set. What is the most important issue we have not yet addressed? The regional question--impact on more than one municipality. We should set up regional chartering in which municipalities would be able to get together. Look at the RPA situation.

Lane: The Commission should produce one proposal and submit an interim report saying that we will submit this bill to local agencies.

Ames: That is a sound idea. If the committee should produce a bill and send it to the RPA, requesting a specific comment, that would initiate the educational process.

DiLuzio: We want input from localities, but we also want to expand their thinking from a parochial view to a regional view.

Ventresca: The Lane approach (that of producing one proposal and submitting an interim report to be given to local agencies) will work only if it is a bill stating that each region is to establish a process. On maps, they do not address a growth policy, except in the basic sense of what resources we have. We don't need an inventory or maps in order to determine what decision-making process should be established. The bottom up approach could be done most effectively by the mandate just described.

Constantinides: Our bill has some characteristics, of which Ventresca speaks. A heavy emphasis on regions is an effective focal point. I believe that if we return to the earlier stage of that bill, we could find a way of achieving consensus, and use this as what we send out to obtain local input.

Carter: Susskind, Ventresca, and Constantinides should meet together to discuss a compromise bill.

Gray: We should involve the business and industrial community in a positive manner.

Saltonstall: Will there be financing for land use planning, eventually?

Carter: The Office of State Planning could finance the writing of the report.

Gray: Could we file a report and a bill?

Saltonstall: I suggest a very small group, including the business community, Ames, Gianturco, Susskind, and Carter write a report and suggest either one bill or a range of bills. Report to us on April 24th meeting. I also suggest that we ask the Farm Bureau if they could give us a more precise memo on transferrable rights.

April 10, 1975 Meeting

Topic: Re-use and Revitalization of Central City Land

Summary: The meeting opened with statements on the following topics:

I. Overview: George Morrison, Executive Director
Roxbury Action Program, Inc.

II. Transportation: Elbert Bishop, Executive Director,
Southwest Corridor Land Development Coalition, Inc.

III. Economic Development of Mini Industrial Park:
Marvin Gilmore, Executive Director, CDC, Inc.

IV. Housing: Chester Gibbs, President, Chester Gibbs Associates,
Inc. Urban Affairs Consultant.

V. Land Banking and Land Trust: Beldon Daniels, Professor,
Harvard School of City and Regional Planning.

VI. Structure and Summary: Chuck Turner, Executive Director,
Circle, Inc.

The statements are briefly outlined below:

I. OVERVIEW--GEORGE MORRISON

This session will attempt to outline our thought process on the necessary elements in an urban Land Use Policy and how these elements relate to overall state policy. From the Governor's statement it does not appear that land use legislation will be considered during this session of the legislature. Everything that we have done to date and may do in the future is a waste of time unless legislation occurs.

This subcommittee has demonstrated that one issue that is paramount is that of self-interest. It is necessary to try to merge all self-interest groups behind a single policy. The policy must contain something for everyone. This may be possible as long as people get to know each other. That way, trade-offs and compromises can be made.

Urban land use is obviously a strong self-interest for everyone not just urban dwellers. The basic economic and cultural institutions of the state are located in urban centers. For this reason, urban land use is an important element in any state land use policy.

II. TRANSPORTATION--ELBERT BISHOP

The literature on the impact of transportation on land use in urban areas is inadequate. This discussion will focus on the Southwest Corridor, particularly

the cleared land area of about 160 acres in Boston. In February of 1970, a moratorium on highway construction was issued which called for the halt of several major highway facilities within Route 128, including the Inner Belt and the Southwest Expressway. In 1972, this moratorium was made permanent and the lands initially cleared for highway expansion are available for development and relocation of the Orange Line. Two other transit lines are proposed-Roxbury Service, which would serve the population in Roxbury and Mattapan, and a cross-town transit from Cambridge to Boston University, Fenway, crossing the Orange Line to the vicinity of Boston City Hospital and U. Mass.

Development of stations on these new routes constitutes one of the major opportunities of the cleared land in the Southwest Corridor. In addition to increasing the job market for the Corridor communities, station development is expected to join together communities which have been separated by the railroad embankment. However, development of land around the stations is also problematic. There is intense speculation on land around the proposed stations. In addition, many of the parcels of land are in fragmented ownership. Both of these conditions call for careful public control. There are several policy options for dealing with these problems. Most recently, attention has been focused on Corridor development corporations with the powers of advance acquisition, eminent domain and excess condemnation to allow such corporations to control land uses to benefit the neighborhood public interests.

Recent legislation drafted by the Skidmore Co. for the U.S. Conference of Mayors outlines additional land use controls necessary in areas near transit stations. It also provides incentives for developers to work with transit authorities. It is unlikely that any of these policies will have an effect on systems already in the works; but it is obvious that new state legislation is needed to give some form of policy control over development.

At present, the MBTA is inadequate for handling development questions. They have little capability for land use analysis. However, there is no sentiment at the state level to coordinate policy formulation. The planning function itself is fragmented among a number of state agencies. Perhaps the Southwest Corridor could be used as a model for developing institutional mechanisms that would provide a framework for controlling the development process. There is a necessity to involve the people of a neighborhood in planning for future development and the impact that the development will have on their community.

III. ECONOMIC DEVELOPMENT OF A MINI-INDUSTRIAL PARK--MARVIN GILMORE

The Community Development Corporation of Boston (CDC) is concerned with the long-term economic impact of physical development and job creation in specific neighborhoods of the central city. There is presently a lack of room for industrial expansion in the central city.

The decline of the tax base in urban areas is also common knowledge. CDC's emphasis is on reversing the trend of suburban industrial parks. In some cases, by renovating the existing vacant physical plant and de-emphasizing the piecemeal development approach in favor of formulating and supporting more long-range goals.

The Governor recognizes the need for such activity, particularly the need for the development of urban industrial parks. The firmest proposed allocation of land in the corridor, aside from the land set aside for transportation uses, is the earmarking of a 29.1 acre site in the Roxbury section for the development of an industrial park. CDC will develop this park in conjunction with the Boston Economic Development and Industrial Commission. CDC has a 105,000 dollar grant to conduct a feasibility study of the area. There is presently a push at both the city and state level to get this project underway. CDC is now looking at potential financing for land acquisition and construction costs (i.e., General Obligation and Revenue Bonds).

CDC perceives its role as intervening in the free play of the market so that the site is developed for a productive use which is also consistent with the fulfillment of community needs.

IV. HOUSING--CHET GIBBS

I am most concerned with housing opportunities for Black and other minority families. We don't need a land use policy to deal with some of the concerns. But a state land use policy might be helpful in dealing with others. State policy should consider two avenues of approach:

1. Redevelopment of the core city where Black and minority families live.
2. Opening up opportunities for integrated housing in the suburbs.

Recommendations:

1. Continue but increase the amount of inner city housing for Blacks and other minorities.

2. DCA should provide support to community development corporations so they can take on the major responsibility for urban redevelopment. DCA and MHFA should allocate funds. At present, most of the financing of these agencies has been given to white housing. Low-income housing in the suburbs should have transportation readily available. Business relocating to the suburbs should provide job opportunities for Blacks wishing to relocate. New jobs and transportation development in the central city should be combined with increased housing opportunity. Suburbs should be required to match the housing they build for the elderly with housing for other low-income groups.

If we wait two years for this study commission to complete its work, DCA will have clearly adopted their own policies which might take the wrong direction.

V. LAND BANKING AND LAND TRUSTS--BELDON DANIELS

It is difficult to undertake any community-based development without having the equity that exists in large corporations. S. 1604 was just unanimously reported out of the Commerce Committee. This bill attempts to deal with this problem by creating a Massachusetts Community Development Finance Corporation. This is the first development bank to be established in the U.S. specifically for the benefit of community development. Such a development bank could provide equity financing for housing in Springfield, for an industrial park in Boston, or for housing in the Southwest Corridor.

S. 1604 creates a $10 million community development finance corporation empowered by the state to provide equity to community-based developments. This is only important if we have a vehicle, like community development corporations, to undertake large-scale developments in the central city.

We should begin to develop in Massachusetts a range of economic development financing instruments which can deal with full range of overall economic development in the state from development of land to development of ventures. We need an overall integrating effort. MHFA is an important instrument in terms of construction loan financing for community housing development. This does not deal with the problem of providing seed money. It does not help in acquisition of land at reasonable cost or mortgage guarantees for the encouragement of industrial plants.

In response to S.1604, originally the Governor said that $10 million obligation bond issue charges would have to be paid by the community develop-

ment finance corporation. We pointed out to the Governor that if this were done, the instrument would simply become one more debt-financing instrument incapable of providing seed money. This would defeat the whole purpose of the bill. Furthermore, it was not what the state should be working for. The state should be working for specific, measurable increased income taxes, corporate income taxes, and Secretary Smith's own figure--for every new job created, there is $3,000 saving to the Commonwealth. Therefore, we will gain by devising mechanisms which create new jobs.

There is a very fine piece of property on the East Boston waterfront. A 500-unit, $17 million project could be built which would be of enormous social and economic benefit. It could be financed by MHFA--mixed housing, commercial and recreational development. This has been hung up because the City of Boston has been unwilling to make the investment to restore the seawall and piers. Now the city has received $43,000 per year on taxes on this property. Afterward, it will receive $254,000 per year. The city will be able to liquidate its investment in 7½ years.

When the state was considering the construction of the highway system, Jamaica Plain, Roxbury, and the South End could be torn down to build highways at a cost of $27 million. But the state is not yet prepared to spend the same amount to integrate these communities to make them socially, physically, and culturally whole. Now the state is prepared to pass the benefit of reduced land costs on to the communities. We should have a state-wide policy which says we are prepared to undertake those same costs in order to benefit the community from the beginning.

Summary of Mechanisms Other States Have Considered:

1. Western states, particularly Oregon and California, have used a people's utility district (i.e., community development corporations specifically for purposes of land and resource development). Oregon has districts which are independent of school districts and municipalities. They can be created within a municipality or county. They can be larger or smaller than the basic government district in the area. Constitutionally, municipalities are wholly creatures of the state. The state has the power to create new districts. These districts have the power to tax. They have the power to issue general obligation bonds and are not dependent on a municipality. Such districts are usually designed for purposes of water development, recreation development, and electric development. Ownership is local, and profits are returned locally, benefits are local. This same mechanism

could be used for land to build an industrial park in Roxbury. These districts not only have the power to tax, but also have power to issue revenue bonds. They separate non-self-liquidating cost from self-liquidating cost.

The overall land planning mechanism in the state should complement housing financing agencies and industrial development financing agencies. We do not have an overall vehicle at athe far end of the rainbow which is capable of financing a Boston industrial park and the East Boston waterfront project.

VI. STRUCTURE--SUMMARY--CHARLES TURNER

I hope concern for the Bicentennial focuses light on some of the principles the country was founded on. Governments were there to aid people in their pursuit of individual growth. Aid in people's attempt to govern themselves. The government that was most important was the government of the individual and family and neighborhood. These principles disappeared from legislation around the 1900's. We need to return to them. In urban areas until the 1900's there was a sense that cities were collections of people trying to have a certain kind of life for themselves. Various ethnic groups interacting in many ways, but also attempting to maintain and develop their own way of life. The political structure reflected this kind of thinking. In the 1900's, an organized minority was able to change political structure in the name of good government, but in reality in pursuit of their own vested interests. If our political structures do not re-emphasize the rights of individuals and neighborhoods, we will have no ability to solve the problems that confront us. Decisions made in abstract planning do not have any validity for human beings. The state legislature really needs to look at structures similar to people's utility districts. Mechanisms that would allow people to protect the base of land. Neighborhoods should have the right to decide how land is to be used.

VII. DISCUSSION

Lee: The City of Boston investment sounds like a good deal.

Daniels: At the time this proposal came up, it was at the time when urban renewal program was frozen and subsequently eliminated. We lost federal funds for development. Programs have shifted from concentrated programs like Model Cities to a community development revenue-sharing program. Now dividing $30,000,000 on a city-wide basis instead of $90,000,000 in a few focused areas. Given the present condition of the money-market, it is

extremely hard for any older city to float general obligation bonds. We should take a developmental approach to these problems. The major impetus is coming from the states now.

Carter: After the land package is assembled in urban areas, what strategies are used to attract industry?

Gilmore: We hope to have the land at zero cost which makes it competitive.

McClintock: The problems you have discussed are more complex than problems in a rural setting. Is traditional land use regulation that has been before this committee of any relevance to these problems?

Daniels: Absolutely. The only way we can deal today with East Boston waterfront or the Southwest Corridor or Chelsea is by a totally integrated approach. Taxes and financing must be integrated with other developmental controls. Two or three basic ways of raising capital besides general obligation bonds. One of the classic ways is the severance tax--Kentucky coal coming out of the ground. Second major source, which Vermont is now using, is unearned increment tax--dependent on amount of profit gain and the length of time the land is held for. It places a high tax on land speculation. Maine--reclaiming by state of over 400,000 acres of commonly held public land which during the late 19th and early 20th centuries went out of control of the Commonwealth. That land is now being returned to the state. It is very valuable land. Value that comes from resale of land under planned use control then goes to community development corporations which can then participate as developers of that land.

Brenner: If you wrote a bill setting out standards for areas of regional concern, would you want the state to do that or would you want a certain amount of participation from localities? This is one of the issues the subcommittee is uncertain about.

Turner: It doesn't make sense for bodies removed from local situations to make decisions.

Bishop: Need structures that keep decision-making decentralized.

Morrison: The people's utility district concept ought to be in legislation. But there is also a need for comprehensive state policy planning mechanisms.

_____: No money is made available to local communities to do planning.

Saltonstall: There is such a bill in Urban Affairs.

Albright: I have a question for Mr. Bishop on incentives available to developers. Are any of these now available?

Bishop: Some are available but hard to get. We need a coordinating mechanism. Development corporations are a way of getting around monolithic organizations. They give more control to a local community. Federal and state regulations should be written so that a community corporation could initiate a corridor development corporation.

Turner: We need legislation that would allow communities of a certain size and character to set up institutions that can give them power over what happens on a certain piece of land. The mechanism needs a financial base. If all we can get is local veto power, then we should start there.

Ventresca: How would this fit into regional approach to growth and development?

Turner: We are talking about a series of regional trade-offs but the existing regional agencies do not represent their constituents.

Gray: Many of them do represent their communities. But I would agree in a few cases representatives do represent a narrow point of view. RPA structure could be more representative.

Turner: The question is, how can we persuade legislators across the state that we need to decentralize power?

Saltonstall: You are focusing on the debate we had two weeks ago trying to define a bill. Some people want to concentrate power because they feel something has to be done and other people want communities to act first.

Morrison: There are ways for certain interest groups to do pretty much what they want. These groups usually have money. Neighborhoods normally do not have that, and so legislation is needed to include neighborhoods.

April 24, 1975 Meeting

Topic: Analysis of the revised draft of the proposed bill relating to Local and Regional Participation in the Formulation of a Growth Management and Land Use Policy for the Commonwealth

Summary: The meeting consisted of two parts:

I. Frank Keefe, recently appointed director of the Office of State Planning, discussed his perceptions of the function of the Office of State Planning (OSP).

II. The Subcommittee conducted a paragraph by paragraph discussion of the most recent summary of the Local and Regional Participation Land Use Bill.

I. Statement by Frank Keefe

Keefe: The Governor has charged OSP with the responsibility of organizing and coordinating existing state policies and objectives to reconcile the various desires and demands of the Commonwealth. At present, this is being done by a number of different agencies, but there is a need to centralize these efforts. The OSP also has a clear role to put together local objectives which may be filtered through the regional planning agencies and put these objectives into some kind of a workable planning package. My overall bias is that we should concentrate on policies which would reinforce old urban centers; such as the Lowell Urban Park concept which has renewed interest in development in Lowell.

_____: What kind of legislative authority does the Office of State Planning have?

Keefe: There was an Office of State Planning and Management in A & F. Governor decided, instead of going through legislature, he would escalate this office to a more prominent position. It is under Secretary Buckley, but I am answerable to Governor. I essentially have cabinet rank without a vote.

McCarthy: My concern chiefly that there be enacted no land use regulations that will in any way impede industrial or economic growth. I believe I can speak for labor groups in this regard.

Keefe: My view of land use planning and regulatory procedures is that, rather than impeding economic development, you would basically accelerate it. We should designate areas which are appropriate from a number of points of view. This would avoid costly battles at local,

regional and state level. Such a land use program would go a long way toward making Massachusetts an area where industry can receive good services. The Governor wants to develop guidelines for growth and development in the state. Given the existing laws, a lot of growth is misdirected.

Saltonstall: The Governor, in his statement to us, said that he wants to take all planning laws and coordinate them through one office. The Subcommittee has been working on drafting a bill that would stimulate local and regional participation in the formulation of state land use and growth management policy. I do not feel that this proposal bill would interfere with the Governor's objectives. I hope it might prove to be a useful tool in meeting those objectives. I realize that the Governor does not want to wait for legislation and this bill should not slow down any efforts that are underway. This Subcommittee will be glad to help your office in any way possible.

Keefe: Thank you. I will be interested in reviewing your approach and commit myself to working with you.

(At this point, Mr. Keefe had to leave to go to another meeting)

II. Discussion of the Local and Regional Participation Bill

Saltonstall: The drafting committee met last week in an attempt to combine Representative Ames' legislative approach with the approach which Don Connors suggested early in the subcommittee's deliberations. Since then, Representative Wetmore, Senator McKinnon, and Representative Demers, have met to organize a steering committee of the Wetmore commission. The steering committee will meet next Tuesday to discuss the legislative approach which is summarized in the handout that you have before you. We would like to have your comments and revisions on this summary.

(The Subcommittee was working from the Summary of the Bill relating to Local and Regional Participation in the Formulation of a Growth Management and Land Use Policy for the Commonwealth

Gray: We might strike "land use" from the title of the bill.

Saltonstall: In some respects, that appeals to me. At the moment, the proposal is not entirely a land use proposal. It relates to all kinds of growth. The first paragraph is introductory, so let's move to the second paragraph which tries to describe what a growth management committee would do.

Gray: Who would be on such a committee? How would they be chosen?

Saltonstall: We could leave it open to the community. Or we could list them as members of selectmen, planning board, industrial development and conservation commissions, etc. It should probably be some combination of elected officials and citizen representatives.

Ventresca: It will have to guarantee minority representation. A representative mix of community. Perhaps some members would be appointed by local elected officials and some appointed by RPA.

Gray: These committees could be appointed by moderator rather than selectmen.

Saltonstall: Some towns have strong moderators who make a number of appointments. Others have weak ones, so that may create problems.

O'Leary: The composition could be one-third public officials, one-third business, one-third minority.

Gray: The statement of growth management problems and priorities should be reviewed in a public hearing.

Ventresca: This approach does not require a municipality to submit a statement.

Saltonstall: We have gone on the basis that a municipality which failed to produce a statement would be risking its approvals on projects requiring A-95 or state review. This incentive got them into RPA's.

Ventresca: The word "required" should be an alternative to simply requesting the statements.

Saltonstall: That is really a question of what the legislature is willing to vote for. McClintock says if it is not reasonably strong, it is not worth voting for. But we must try it on the legislators.

Brenner: If the incentives are the same and the statements are "required", what is the legal remedy if the towns do not submit the statements? Could there be a writ of mandamus if the town took no action?

Ventresca: Action could be taken legally and legislatively.

Saltonstall: If we are looking for push, the question of having the state or RPA do planning for them would get communities started.

Ventresca: Maybe the regional planning agency could go ahead with regional plan without the locality's statement or maybe we should tie compliance to the cherry sheet.

Carter: Where do the small grants for producing these statements come from?

Brenner: There is a certain amount of 701 money that might be available to carry out the process.

Saltonstall: We hope to have local matching funds such as in Duxbury and Rockport.

Gray: If several small towns want to get together, they could pool consultant services.

Carter: In that case, we might as well have regional planning agency do it.

Gluck: Any money that may come from federal land use legislation, when passed, should be included.

Saltonstall: That is part of the thought in mind.

Gluck: We should spell it out explicitly.

_____: Should the Statement of Growth Management Problems and Priorities be approved by the town meeting?

Saltonstall: The system of approval in a town was discussed as being the town meeting and the city council in a city, following as many open meetings as seemed to be called for. Should substantial minority reports also be accepted? I think they should be. The minority in one town could be the majority in the next town. One of the things I want to discuss is described in the next two or three sentences--("areas of critical concern...Martha's Vineyard bill, etc.") I wonder whether listing categories that should be covered should say "may include without limitation such things as transportation, schools, water supply, utilities, population growth and mix, places of employment." Towns should be asked to designate where their people are going to work. The question of future tax growth should be addressed. Should a list like that say "shall include" instead of "may include"?

_____: The longer the list grows, the larger the grants will have to be. How binding are these statements going to be?

Carter: What if the town says, "We don't want low-income housing?" How binding is that?

Saltonstall: Ch.774 and the Department of Communities have been working on that. Obviously, the local Statement could not conflict with existing state policy or the state policy would pre-empt the local Statement.

Ventresca: The town can make statements on some categories, but the state really has control in areas where clearly defined policy exists.

Webb: Some central state department could make available a list of guidelines for the preparation of the statements.

Saltonstall: We should include a phrase that the Office of State Planning, and all secretariats shall render all assistance within their means to the towns for carrying out the intent of this Act.

O'Leary: We need input somewhere between the RPA's and local communities. Local districts such as solid waste districts and other special districts should have some input.

Saltonstall: Any other agency or multi-community agency, if it wishes, could submit such a report (regional school or water district, MDC, etc.).

Perry: In the initial draft, we suggested that the statements be submitted to any multi-community agency or special district to which the community belonged.

Gray: The statement should also include not only the number of variances which were granted in the past, but also those which failed.

_____: Each town should be asked to consider the important things occurring in surrounding towns.

Saltonstall: One suggestion made was that the state develop a standard questionnaire to ask towns. They would not necessarily have to follow this questionnaire, but it would be helpful if they did.

Ventresca: If a definite laundry list is not considered, it will be difficult to correlate the results. Some standard form is needed.

Saltonstall: Let's move to the next paragraph starting, "Municipality is free...". This is partly a stick and partly a carrot.

Gray: One of the requirements of A-95 review is tnat the project be consistent with regional goals. The RPA could say the community had not complied with regional goals by not submitting the statement.

Saltonstall: Does the federal government have standards for turning things down under A-95?

Carter: One of the things reviewed is consistency in state standards and criteria.

Ventresca: This is the only stick in the bill. What about tying compliance to the cherry sheet and state reimbursements?

Saltonstall: This is the idea of 701 and small grants.

Ventresca: Could it also be tied to Chapter 90 or school aid?

Saltonstall: I would hesitate to do it with school aid. Maybe we could say capital outlay would not be forthcoming. We should probably simply include as many sanctions for non-compliance as are politically feasible. However, if the state decides to turn down a project, it should have a public hearing in the town to explain.

Gluck: Some towns have already done a great deal of work towards developing community goals, master plans, etc. Other towns have not even begun.

What if a town went through the process of preparing a statement, only to find that it conflicts with what the state feels should be done? Should the state suggest criteria for what it plans to do and allow the towns to respond to it?

Perry: In the second paragraph, where it states, "Localities will be asked to react to specific intergovernmental models for land management," it means that the state would prepare several models which it might consider enacting, and ask the localities to respond to them. In this way, the localities could get an idea of what the state is considering and would have an opportunity to react to and suggest revisions in those models.

Webb: Towns may not be aware of what other surrounding communities are doing. The RPA should coordinate the plans to keep all of the towns informed of what is going on in the region.

Perry: The bill provides for the statements to be submitted to all abutting communities.

Saltonstall: The RPA should hold public hearings on the composite regional report.

Gray: There might also be subregional hearings.

Saltonstall: The major problem that may result from this bill is that of reconciling differences between communities. In the coastal zone bill, the regions are instructed to make their best efforts to resolve differences, but after that they forward what they have to the state. Perhaps we should follow the same procedure in this bill. Another problem that arises is, should the regions respond to different criteria than the localities in the formulation of the Regional Reports?

Gray: No.

Saltonstall: Should any administrative authority other than planning be managed through regions? Should we include in this bill any overhauling of RPA's?

Carter: That is another political issue. We probably don't want to deal with it at this point in time.

Brenner: If we have subregional hearings, what will this do to the time schedule?

Saltonstall: We would prefer to keep a short time span. But I think 18 months is far too short.

Brenner: 2½-3 years is more realistic.

Saltonstall: At least that. Conceivably more.

Gray: If the Act becomes effective on January 1, the towns will need 15-17 months for approval of town meetings. We could work with 24 months as an initial time period. Since we don't know when the law will become effective, we must be flexible with dates.

Saltonstall: Yes, but we should keep the pressure on. The critical question is when we should bring all of the reports back to the legislature. This effectively combines Connor's scheme with the Hatch-Ames scheme.

Albright: Chances of passage of legislation would be increased with the backing of the Governor. Bring Keefe into the process of drafting.

Saltonstall: Yes. When the steering committee is formed, I hope Keefe will be included.

June 19, 1975 Meeting

Topic: Presentation of the Findings of the SENE Study and Announcement of OSP's and the Governor's Reaction to the Proposed Legislation.

Frank Keefe: The Governor has decided to endorse a joint legislative-administrative approach for the formulation of a state growth and development policy. This will be a coordinated effort between the administrative process of the Office of State Planning and the legislative process proposed by the Wetmore Commission. Our office and the Governor have suggested several amendments to the legislation. The Commission will have the support of the Governor in promoting the legislation.

Briefly, the recommended amendments are as follows: (1) Abridging the time schedule presented in the legislation--three months for local statements, one month for regional review, three months at the state level; (2) We would like to replace the requirement that the process results in legislation, with the requirement that the process ends with a final report to the legislature. This allows more options. The report could be legislation; (3) Remove the mention of small grants to the localities for the development of statements. The state does not have the money; (4) Authorize free technical assistance from the RPA's; (5) Remove the sanctions for non-compliance. It would not be mandatory for a town to prepare a statement. This is an opportunity for the localities to participate in a substantial way in the development of state policy. We do not want to force them to participate.

Saltonstall: When you say 'not mandatory', do you expect to use every moral persuasion to get the towns to participate?

Keefe: OSP will work with the RPA's and the Department of Communities and Development to provide technical assistance for the formulation of the local statements. OSP would also like to work with the Commission to develop a questionnaire that will generate local interest and be easy to respond to.

The other amendments that we have suggested are: (6) Include a pre-

amble with the bill that will define the problems and costs which result from unplanned and uncoordinated growth patterns;
(7) Instead of requiring that the local statements be endorsed by town meeting, we suggest that the local growth policy commissions develop the statement and have the selectmen endorse it. There would still be hearings on the statements as outlined originally.

Fegan: Massachusetts has 351 municipalities. Cities and larger communities have planning staffs to carry out this type of process. Who speaks for the communities that do not have the leadership to carry this out?

Keefe: I recognize the problem. The RPA's can generate interest and Secretary Flynn is developing technical assistance for localities.

Susskind: Is there a possibility of having a statement from your office to the RPA's encouraging them to use 701 money to assist communities in the development of these statements?

Keefe: Yes.

Gray: What is the reason for the short time periods?

Keefe: OSP is presently talking about developing a first cut at a growth and development policy for the cabinet. If the Wetmore Commission and OSP can parallel their work, we will have simultaneous legislative and executive action on these policies. We are trying to coordinate the work of OSP and the Wetmore Commission.
I realize this is moving very quickly. If we collapse the time schedule into six months or a year we may be allright. If the legislation passes in September, it would be ideal. If it does not pass until December, we may have difficulty coordinating our efforts.

Saltonstall: I am not so concerned about accelerating the schedule. If towns do not send in their reports, the time may have to be extended. Towns that are late will only be hurting their own opportunity to participate. We should try to encourage people to be fast. I am concerned, however, that without sanctions or state aid, no one will do anything.

Ventresca: Without sanctions will the whole process bog down because the communities have no real desire? I am also concerned with the

overlap of this approach with the Coastal Zone Task Force. We are presently attempting to develop a coastal zone regulatory process. What happens if the coastal zone group moves in one direction and this process moves in another?

Keefe: We have anticipated this problem. Any coastal zone proposals fall within the coordination of OSP. Since the major responsibility is in our office, there is a real requirement that whatever proposals come from coastal zone will have to adhere to state-wide policy.

On sanctions, I do not think they will work. I don't think the proposed sanctions would be recognized by federal agencies. I feel cities will participate very quickly. It is the small towns that are going to be difficult. They will not be reached through sanctions. They might be reached through an educational program. We should have a meeting with the RPA's to discuss this legislation and their key role in it. The RPA's might be given the responsibility for reaching the small municipalities, with as much cooperation at the state level as we can provide.

Saltonstall: I think we should have that meeting. I will schedule it for one week from today. My reaction is to agree with the Governor. The legislature seems to be heading for a dead period during July. If we wait for August to complete our discussions, we may not get the bill considered until September or October. Then nothing might happen for another year. Let's meet next week to consider these suggestions in more detail and discuss the legislation with the RPA's. At that meeting, perhaps we can reach a consensus about what to send the commission and the legislature.

Mr. Robert Kasvinsky then presented the SENE study.
Summaries of the Southeastern New Englan Study may be obtained by writing The New England River Basins Commission, 408 Atlantic Ave., Boston, MA 02210

June 25, 1975 Meeting

Topic: Consideration of OSP and Governor's proposed changes to the legislation and discussion of RPA role in implementing the proposed process.

Saltonstall: The meeting today is to solicit the reactions of the RPA directors, who we have with us, to the OSP revised draft of our legislation. I also hope that the subcommittee can reach a consensus on its recommendations to the Wetmore Commisssion. The Commission will be meeting one week from today to consider the final draft of the legislation that this subcommittee decides upon. The draft of the bill that you have before you was prepared by OSP. It calls for a shorter time span than our original draft and includes a preamble and some other changes that were requested by the Governor.

In general terms the bill calls for the Office of State Planning to send a questionnaire to each community asking for answers to specific questions relating to the community's growth management problems and priorities. Each community would be asked to establish a local growth policy commission (described on page 4 of the bill). The local commissions would hold public hearings and conduct necessary discussions for responding to the state questionnaire. Based on the local reports, the RPA's would prepare regional reports that identify regional problems and prioities; and would attempt to resolve any differences between communities. Both the local and regional reports would then be forwarded to OSP which would use them in the formulation of state growth management and development policies, and to make recommendations to the executive and the legislature.

Obviously, the bill calls for heavy local and regional involvement in the forumulation of state policies.

Wetmore: If the subcommittee agrees upon a bill the Commission can put it out in report form and it can be referred to a committee hearing in August.

Keefe: We have asked the directors of the Regional Planning Agencies to respond to this legislation because it seems that the RPA's are the best unit of government to reconcile local differences in terms of appreciation of statewide policies and objectives.

Miller(MAPC): We support legislation that would create a statewide land use policy framework. We are also in favor of a "bottom-up" approach for the development of this policy. Our major concern is the compression of the time schedule and that the sanctions and incentives have been deleted from this draft of the bill. Without sanctions or incentives many cities and towns may simply not respond.

Saltonstall: In the original draft provisions were made for the denial of money to communities that did not participate and for small grants to those that did participate. The state presently has no money to provide small grants and the executive office hesitates to put communities under compulsion to participate. The only remaining compulsion is that communities which do not participate are giving up their opportunity to influence state policy.

Gray: What other possibilities, either positive or negative, would encourage communities to participate?

Keefe: My personal feeling is that sanctions are either unworkable or unnecessary. Therefore, it is best to eliminate them entirely. We do not want to force communities to participate. Forced participation seems to contradict the intent of the act. We also do not want to force communities to comply without offering them compensation. OSP and the RPA's can offer technical assistance to help localities with the preparation of the statements. This is the only incentive we can offer. The Governor feels strongly about this.

Saltonstall: At our meeting with the Governor last winter, I asked him about sanctions. He said he would use every moral persuasion to get the communities to participate.

Gray: In some states they have said that if the localities did not do it the state would.

Keefe: We are asking localities to participate in the formulation of state policy. If they decide not to participate that is their choice. Is it necessary to make it more explicit?

Gray: Communities like to have it spelled out.

Susskind: California has had a law mandating local planning for several years. The state has not had the time or the resources to go into a locality and do the planning when the community did not comply. We are trying to present a positive opportunity to the localities. Should there be language in the bill that says RPA's are hereby directed by the legislature and OSP to provide any and all assistance, both technical and financial aid, for the formulation of these statements (701 and 208 fund etc.)

Keefe: The main incentive for a community to participate in this process is that they may develop policies which will address local concerns and at the same time fit into a statewide context.

DiLuzio: I question the capability of RPA's tp provide technical assistance for a program of this magnitude. I don't think the idea of moral persuasion will get very far. There should be a stipulation that if a community doesn't respond the state will step in. This will, at least, stimulate some movement.

Keefe: With respect to 701, there is no 701 money available. With regard to RPA's not being capable to provide technical assistance, they are presently being given $7 million to do water quality and other planning.

DiLuzio: The money does not address the issue of establishing communication between local communities and the RPA's.

Susskind: The bill is designed to increase communication between all levels of government. However, we need incentives to provide for the local response. Perhaps the legislation could tie the local statements to the A-95 review process,

this was done in an earlier draft. In addition, the state is getting $18 to $20 million per year in planning grants. More of this money should go to local communities. I suggest that it is very important to have an explicit statement in the legislation that says we expect the RPA's to provide assistance to localities from 701, 208 and other grants. Both 701 and 208 have significant citizen participation and land use components. The process described in the legislation fits right into these 701 and 208 requirements.

Paul Doan (Cape Cod Planning Commission): I am concerned about the multiplicity of local planning efforts. Why is another commission established to formulate the local growth policy statements? Would it not be better to ask the local planning board to prepare the statement? In regard to the RPA's providing technical assistance, what happens when the local municipalities' objectives are radically different from the regional objectives? Would it be legitimate for RPA personnel to be in conflict with the community they were assisting?

Keefe: RPA people always find themselves in this position. But there is a difference between providing technical assistance and telling a locality what to do. The first report will describe local priorities and objectives. Technical assistance for this report might include specific data from the RPA etc. The RPA will then review and comment on what the localities have put together and attempt to resolve any conflicts between various municipalities or municipalities and the region.

Saltonstall: One mechanism which we had used earlier to address the problem of conflicts was minority reports. I believe it was left out of this draft but it should be reinserted. Minority reports would be useful because in large cities different in one town may be the majority view in an abutting community; and minority views may be consistent with regional goals in cases where majority views are not or vice versa. For these reasons we may need to

provide that OSP receive minority reports. Going back to the planning board issue, we may be wrong in asking for another commission. However, planning boards are so involved in the problems of day to day administration and zoning changes that they might not have time to give the statement adequate attention. These statements involve more than zoning issues. They involve the growth of the whole community. Adequate citizen participation must be insured.

Paul Doan: Was any thought given to having the RPA's submit questions to the localities rather than having initiative come from the state?

Saltonstall: That would mean more work for the RPA's. Would you be prepared to do it? Perhaps it would be better to have OSP, the RPA's, and the commission to prepare the questionnaires together.

Doherty (MAPC): The funds that RPA's presently have are specifically allocated to projects agreed upon with the federal government. Better than 50% of our budget goes to technical assistance and the development and updating of regional plans.

Keefe: We think that the opportunity offered to the communities through this bill is important enough that they will want to participate even if additional funds are not available. The Commonwealth does provide $100,000 a year to be divided among the 13 RPA's with no strings attached. We have included this $100,000 in the budget again this year; if the legislative keeps it in, these funds might be used for the process discussed in the bill. The reason for the abridged time schedule is that we wanted greater coordination between this program and the ongoing activities of OSP.

Doherty: MAPC gets only 18% of that $100,000.

Ventresca: The bill should contain more discussion of the impact of local and state tax policy on land use and growth patterns. There should also be a hearing process or some other citizen participation requirement at the regional level. In addition, the section defining potential areas of critical planning

concern is heavily weighted toward conservation, we should also include a more detailed explanation of areas suitable for commercial and industrial development. Section 8 states specifically that there shall not be any judicial review. I am not sure you can do that. Finally, the commission you have created at the state level is unconstitutional.

Saltonstall: The commission is constitutional if it is a temporary commission, which is what we had in mind. However, we must include a termination date.

Mary Peardon (DCA): The bill seems to ask for descriptions and lists rather a discussion of issues and policies of concern to local people.

Susskind: The questionnaire that stems from this section should try to sharpen policy issues rather than collect data. Perhaps the communities could map areas that they would like to see conserved, other areas they would like developed, indicating density, type, an pace of development.

Paradise: The communities should outline long term goals rather than using a map.

Susskind: Is this reasonable in the time frame alloted? I would like to see more long range planning but it may be difficult with this time schedule. If the communities have done this type of thing they should include it. The questionnaire should be as succinct as possible. Perhaps including a number of closed ended or multiple choice questions. (ie. amount of land for conservation, development etc.)

Saltonstall: There also needs to be more information on long range economics and transportation.

Keefe: This whole section should be rewritten and made more specific so that it is easily translatable into a questionnaire. We will work on it.

Susskind: If people have specific items they would like in the questionnaire, can they call you?

Keefe: Yes, by Monday.

Bill Klein(Nantucket Planning and Econ. Dev. Comm.): I am concerned about the time frame, but we can probably live with it.

I am also concerned about creating another local planning body. Rather than dictating to the community what the specific make up of the commission is to be, why not give them 3 or 4 choices? Let the communities decide what the appropriate agency would be. Also, why does the moderator make the appointments, but then is given no further responsibilities?

Saltonstall: In a great many communities the moderator makes many appointments. Perhaps this should be the chief elective officer.

Fegan: As I understand the bill, it calls for a short term process that will be done once. Citizen groups will put a great deal of time into such a project as long as they know that it will not be an endless process. An announcement of the request for the statements should be sent to organizations already in place that have an interest in the land use and growth policy question (ie league of women voters etc). In addition, the towns should recognize that where data is available they should not generate the same data. The RPA's can be helpful here.

Colby: The impact of the state and local tax structure affects land use. The bill should deal with local taxation more specifically (ie What does it cost to have a house built in your town? What is the effect of school taxes etc.)

Barrus: The bill makes no mention of compensation for loss of equity. There should be a section requesting a study of methods of compensating different land owners for loss of equity that might result from different regulatory procedures. In addition, the validity of the community's response to the proposed questionnaire will depend upon the data available. If the towns do not have the data the responses will not be meaningful. I suggest the $100,000 of state money to the RPA's be used for gathering necessary data.

Savolainen (SRPEDD): The reports from the RPA's should go back to the municipalities in draft form for comment and review.

Saltonstall: We will make as many of the suggested changes in the bill as possible before submitting it to the commission. I think

the bill is worth trying to get into the legislature before its recess. Action would then be possible by August. Is there a consensus on this approach? (There was no dissent.)

IV. APPENDIX: STATEMENTS SUBMITTED TO THE LAND USE SUBCOMMITTEE

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF COMMUNITY AFFAIRS

A. STATUS OF STATE LAND USE POLICY IN THE FIFTY STATES: A MATRIX

State Land Use Project
Bureau of Regional Planning

(1974)

FOREWORD

The role of state government in the field of land use planning, management and regulation has changed significantly over the years. Today, state controls have replaced local decision-making over most key land use issues in eight states, and in about twenty five states the idea is being studied.

The purpose of this publication is to provide the reader with an instant overview on the status of state land use planning and managementin the fifty states. The information presented in the following matrix was complied from a survey-report prepared by Land Use Reports in September 1973, and from a more recent survey undertaken by the Department of Community Affairs in conjunction with the State Land Use Project during the summer 1974. The project was financed in part through a comprehensive planning assistance grant from the U.S. Department of Housing and Urban Development, under the provisions of Section 701 of the Housing Act of 1954, as amended.

STATUS OF LAND USE POLICY IN THE FIFTY STATES* (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
Alabama	Study to recommend a state land use policy	Legislation (1974) to create a study commission to investigate land use practices, and make recommendations	
Alaska	Study, in the Governor's Office, to develop a comprehensive planning process, termed a "state strategy"	Legislation to implement state comprehensive planning process will be submitted in 1975	By federal law, a Federal-State Land Use Planning Commission was established in 1971, and is now developing data bases, regional profiles, and land use programs
Arizona	The Arizona Environmental Planning Commission (AEPC) is conducting hearings on state land use, and developing a plan by 1975	A state land use plan will be recommended to the legislature in 1975 by the AEPC.	In 1973, the legislature created the Arizona Environmental Planning Commission to prepare a state land use plan for the 1975 legislature.
Arkansas	Advisory Committee appointed by the Governor to study and identify land use problems and propose solutions	Legislation may or may not be proposed in 1975 as result of study, taking either comprehensive approach, or more limited, specific approaches to particular problems.	

* Source: Land Use Planning Reports, A Summary of State Land Use Controls

STATUS OF LAND USE POLICY
IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
California	Coastal Zone conservation and management plan to be completed in 1975 by regional commissions and the Coastal Zone Conservation Commission	Legislation for comprehensive state planning, intergovernmental coordination, a comprehensive state goals and objectives report, and recommendations of areas of statewide critical environmental concern is proposed. Also, there is a bill creating an Environmental Affairs Agency to promulgate guidelines for development around key facilities and in areas of critical state concern.	Coastal Zone Act (1972) sets up a permit process for coastal development. Williamson Act protects agricultural, forest and open space lands. The State Planning Act of 1970 directs state agencies to list areas of critical environmental concern, but there are no controls.
Colorado	Colorado Land Use Commission program defining a framework for a process to guide future development including a short-term and long-term action plan. A priority consideration is the creation of a state land use agency.		Legislation (1974) gives the state power to set criteria for "areas and activities of statewide interest." Localities must designate and regulate DRI's, critical areas, key facilities, etc.
Connecticut	Plan of Conservation and Development has been proposed, contains state policies on land use; is presently being reviewed statewide in workshops and hearings, etc.	Legislative actions due in 1975, when plan is presented.	
Delaware	Study called Delaware Tommorrow will begin soon, by an appointed committee, and will look at future growth and land use needs in the state.		State has Coastal Zone Act which bans heavy industry on the coast, and a Beach Protection Act.

STATUS OF LAND USE POLICY IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
Florida	Environmental Land Management Study completed about now.	Environmental Land Management Study to recommend further legislation	The Environmental Land and Water Management Act of 1972 gives the state authority to designate areas of critical state concern, adopt guidelines for identifying developments of regional impact, approve local regulations and hear appeals from local decisions. Florida also enacted a resolution on state growth policy, but no implementing legislation has been passed.
Georgia	A management plan for the coastal zone is being prepared.	Bill to protect "vital areas" failed in 1974. It also provided for local ordinances to be consistent with the state plan.	
Hawaii	Growth policy plan for the next ten years has been prepared, is being further studied by legislative committee	Growth policy plan may be the basis for further legislative proposals. Land use policy and critical areas legislation may be submitted after review of the growth policy.	Hawaii has enacted state zoning (1961) for urban, agricultural, rural and conservation districts. The four counties of the state have controls in the urban districts
Idaho		Bills to regulate critical areas and facilities of regional impact were defeated and will be reintroduced in 1975. Chances are better this time.	

STATUS OF LAND USE POLICY
IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
Illinois		Bills have been introduced for: a study commission on land use, a land use planning and management act, and a depressed areas land use and community development act	
Indiana	Governor's Land Use Study Commission is inactive	Major land use bills said to be unlikely in absence of federal land use legislation. Bill patterned after Udall bill withdrawn after U.S. House killed the federal proposal	State Planning Service Agency in Governor's Office created by new legislation. Formerly, state planning was in the Dept. of Commerc
Iowa		Bill defeated which would have enlarged the Dept. of Soil Conservation to include an appointed state land use commission which would formulate state guidelines subject to legislative approval. County land use commissions would develop local land use guidelines requiring all cities and counties to have comprehensive plans and provisions for implementation. Similar legislation will be attempted in 1975.	
Kansas	A special interim legislative committee and an advisory committee have studied land use in other states and identified issues.		

STATUS OF LAND USE POLICY
IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
Kentucky	NSF-funded study working to develop a mechanism to balance economic and environmental interests	Land Use Planning Council is recommending legislation to qualify state for federal grants.	Enacted a law creating a Land Use Planning Council, to report to the legislature in 1976 recommending legislation to qualify the state for federal grants
Louisiana	Governor's Office of State Planning is drafting a growth and conservation policy aimed toward eventual state land use plan. The growth study is going to develop growth and critical areas guidelines. Also, the state is developing a statewide land use map. The Louisiana Advisory Commission on Coastal and Marine Resources has proposed a coastal zone management plan.		
Maine			Laws have been enacted: regulating land use in the unorganized areas (Maine Land Use Regulation Commission regulating DRI's (the Site Location of Development Law); setting up a register of critical areas to be regulated; requiring localities to zone their shorelands; and protecting wetlands. Together these statutes provide some of the key elements of comprehensive state land use management.

STATUS OF LAND USE POLICY IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
Maryland		Coastal Zone Management bill was proposed and defeated this year.	Maryland has just passed a critical areas statute. The state issues guidelines to identify critical areas and the localities and regional agencies identify critical areas. The state has power to intervene judicially in local actions concerning critical areas.
Massachusetts	Resource Management Policy Council (RMPC) State Land Use Project is studying land use management alternatives for the state, with emphasis on the regulation of critical areas and developments of regional impact. A special commission was created by the legislature(1974)to study and recommend alternative strategies on land use and growth policy.	A bill, to be resubmitted for the 1975 session, proposes setting up twelve regional resource committees to regulate developments in areas of critical planning concern, and developments of regional impact. State would have strong policy setting and review powers.	Martha's Vineyard Commission is empowered to regulate land use on that island (Districts of Critical Planning Concern and Developments of Regional Impact). A mechanism has also been created through which a developer of low income housing may appeal to the state to override local zoning restrictions hindering its construction.
Michigan	Newly established Office of Land Use is preparing a land classification system and a report on state policies and roles in land use.	A bill was defeated which proposed to create a state Land Use Commission which would develop a state land use plan and an inventory and classification of critical land areas, which it could regulate until completion of the plan.	

STATUS OF LAND USE POLICY IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
Minnesota	A report on critical area designation guidelines is completed around now. The Commission on Minnesota's Future is developing alternative growth strategies. The Twin Cities Metropolitan Council is developing guidelines for controlling projects of metropolitan significance, and is preparing a Metropolitan Development Guide (comprehensive plan).	Legislative recommendations of the Twin Cities Metropolitan Council are forthcoming, relative to its guidelines and development plans, including growth controls.	The T.C. Metro Council is directed to develop guidelines for controlling projects of metropolitan significance The Critical Areas Act of 1973 and the Environmental Quality Council Act of 1973 authorize criteria for designating critical areas, and the regulation of same, including review of local plans.
Mississippi	A task force on growth has been created to coordinate planning and set goals for the state.		
Missouri	Environmental Advisory Group is preparing report to the governor on growth and its impact on critical areas; report will include assessment of social and economic as well as land use trends.		
Montana	Montana Environmental Quality Council is reporting on state land use policy alternatives.	Legislation to establish a state Planning and Community Development Department was defeated; similar legislation will be resubmitted, to give such a department power to begin a statewide planning process and to identify critical areas. Actual controls would require further proposed legislation.	Environmental Policy Act (1971) requires evaluation of environmental consequences of government actions. This act also created the Montana Environmental Quality Council, which has been directed by resolution to report on state land use policy alternatives in 1975.

STATUS OF LAND USE POLICY
IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
Nebraska	The Senate Agriculture and Environment Committee is conducting hearings, etc, to determine how to approach land use legislation to develop a state plan in the best economic interests of the state.		The state has a Flood Plain Zoning Act. If localities don't regulate, the state Natural Resources Commission will.
Nevada	Two advisory groups are taking part in the development of a statewide land use planning process.	Statewide water plan is to be submitted to the legislature in 1975; crucial to development patterns.	The Nevada State Land Use Planning Act (1973) enables the governor to regulate unplanned areas. The act requires the development of a statewide land use planning process, and designation of critical areas. No authority to regulate DRI's.
New Hampshire	Open Space Land Study Commission reports to the legislature in 1975, and is focusing on critical lands, not comprehensive policy	A bill to identify critical environmental areas was defeated in 1974. State Planning Office is drafting legislation to create a comprehensive state land use policy and review powers for major projects.	The Open Space Land Study Commission was created by the legislature to make recommendations in 1975.
New Jersey	State Land Planning Task Force was charged with reviewing the state planning structure and possible comprehensive land use legislation. Has submitted a confidential report to the governor.	Proposals defeated, and likely to be proposed again, included critical areas, low income housing and development agency legislation. Legislation will also be proposed based on the task force report.	The 1973 Coastal Area Facility Review Act provides for state regulation of certain kinds of major development in the coastal zone. The Hackensack Meadowlands Development Commission exercises significant regional land use controls.

STATUS OF LAND USE POLICY
IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
New Mexico	The Land Use Advisory Council is developing data storage and retrieval system and will make recommendations for land use legislation. The state engineer has been working on a state water plan.	Environmental impact legislation for state projects has been repealed, and will be resubmitted in weakened form. Land Use Advisory Council recommendations are due.	
New York	The Department of Environmental Conservation has prepared a N.Y. State Environmental Plan. The Catskill Commission and the Tug Hill Commission are studying those areas.		The Adirondack Park Agency (1971) controls development of public and private land in the Adirondack State Park. Plans for both public and private lands have been adopted, the latter enabling the agency to review and approve private developments over 5 acres. The Department of Environmental Conservation is authorized to impose flood plain controls when localities fail to. The St. Lawrence River Commission, with planning and coordinating authority, has been revived.
North Carolina	The Land Policy Council is developing a state land policy for the governor.	The Land Policy Council will formulate legislation to implement proposed state land use policies.	The Land Policy Act of 1974 creates a Land Policy Council to recommend a statewide land policy to the governor, to be a nonbinding foundation for a subsequently authorized comprehensive land management process. Areas of particular public concern and developments of interest to the state provide a central focus. The Act also provides for state land use classification and information systems, investigation of state land use laws, and guidelines for local planning. A strong state-oriented

STATUS OF LAND USE POLICY
IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
North Carolina (cont.)			coastal area management act was also passed in 1974, along with a Land Conservancy Act.
North Dakota	The legislative council is conducting a study of land use planning and zoning, primarily local and regional, for clarification and recodification.	Comprehensive land use legislation to be proposed, but little chance of success.	
Ohio	The Land Use Policy Work Group is completing a report.	A bill affecting key facilities has been introduced and killed; is being reintroduced, but going nowhere so far.	
Oklahoma	A Technical Land Use Advisory Committee has been established to assist the state in preparing for Federal legislation.		
Oregon	Agencies are carrying out studies and preparing both comprehensive, stetewide, and coastal area goals, guidelines and plans.	Land sales regulation act was killed in 1973, and will be reintroduced in 1975, in different form. Coastal zone plan is soon to be submitted to the legislature. The Land Consevation and Development Commission will recommend the designation of critical areas to the legislature.	In 1973, Oregon passed a comprehensive land use law, establishing the Land Conservation and Development Commission. It is directed to: establish state planning goals and guidelines to govern state and local activities to identify activities of statewide significance and issue planning and siting permits for same (public facilities, etc.); and to review local plans, zoning and subdivision controls for conformity with commission goals.

STATUS OF LAND USE POLICY IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
Pennsylvania	An interagency task force is doing a study for state legislation, based on the federal bill, and developing a policy statement.	Various existing land use proposals are being studied by the interagency task force; may introduce legislation, based on federal legislation.	
Rhode Island	A comprehensive State Guide Plan is to include a State Land Use Policy and Plan covering the A-95 review process and state land use statutes. The Guide Plan also includes transportation and other elements. Coastal Zone Plans are being prepared.	Critical areas legislation should be among the more comprehensive proposals for the upcoming year, resulting from the State Land Use Policy and Plan. Further coastal zone legislation should be forthcoming.	A Coastal Zone Manegement Council has been created to administer the coastal zone program, covering certain major coastal land activities and all activities below high water mark. Final coastal plan is to correspond with the State Guide Plan.
South Carolina	The Governor's Special Study Committee on Land Policy has been making policy recommendations on land use, economic and environmental conflicts, and community development. The Governor has also set up a Coastal Zone Planning and Management Council to develop and administer the Coastal Zone Program.	A proposal to regulate coastal activities failed to pass.	
South Dakota	The Interin Legislative Committee on Land Use Planning is reviewing critical areas legislation.	A critical areas bill was defeated in 1974, and presumably will be considered again.	An environmental impact law for state and local projects was enacted. The Interim Legislative Committee on Land Use Planning was continued.

STATUS OF LAND USE POLICY IN THE FIFTY STATES (as of 1974)

STATUS OF LAND USE POLICY
IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
Tennessee	The State Planning Office, two legislative committees, and s state land use planning task force are working together on land use issues.	A bill to establish the Tennessee Land Use Study Commission failed to pass, and will probably be reintroduced. It would do a four year study of land use planning.	
Texas	A major report on Texas land use was commissioned by the Governor's office and was completed the end of 1973.	Three legislative committees are reviewing proposals and expect to make recommendations in 1975. Critical area and DRI legislation seem unlikely to be enacted.	A Coastal Lands Management Act was passed in 1973. Public ownership of beaches up to the vegetation line has been established. Permit and leasing programs are effect along the coast.
Utah	A study on the development of the Utah Process: defines a procedure for planning, coordination thru forecasting and evaluating alternative state futures (1972)	The Utah Land Use Act was passed in 1974, but before it could go into effect it was subject to successful referendum petition by the John Birch Society, set for November. The act called for the designation and planning of critical environmental areas, subject to legislative approval.	(Environmental impact statements are now required of all state agencies, by executive order.)
Vermont	A legislative committee is studying the final state plan (the third planning phase of Act 250). As originally proposed, it was going to include statewide mapping as a basis for regulation. Now the committee is leaning toward a critical areas, key facilities approach instead of mapping.	The legislature failed to approve the third state plan as first proposed. Having passed the first two plans, it will eventually consider the revised version of the third, to be submitted by its legislative committee now reviewing it.	Vermont has enacted a comprehensive Land Use and Development law (Act 250, 1970), which mandates three successive statewide land use plans, to become the basis for a statewide regulatory system covering a major portion of all development in the State. The Act created a state Environmental Board and eight District Commissions to carry out the permit granting process.

STATUS OF LAND USE POLICY
IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
Vermont (cont.)			The legislature enacted the first two plans. The second, a capability and development plan, is currently being used as the major regulatory guideline containing principles and criteria for conservation and development.
Virginia	The Advisory Legislative Council's Land Use Policies Committee has proposed and will continue to propose land use legislation, including critical areas legislation.	Critical areas legislation proposed by the Advisory Legislative Council's Land Use Policies Committee has been killed, along with a bill to establish consistent statewide subdivision ordinances.	
Washington		Two bills were killed: one for direct state regulation of activity of greater than local concern and one for an act based on the federal legislation. The House Local Government Committee is drafting its own bill, based on the Oregon land use bill. Its chances may be good.	The 1972 Shoreline Management Act was passed by a referendum. The state has authority to make guidelines for local implementation of plans and regulations, and may review local plans and decisions.
West Virginia	(Little of significance ...)		
Wisconsin		Legislation for the designation and regulation of critical areas and DRI's failed. Chances not good for 1975 proposals.	Wisconsin enacted a statute requiring zoning for shorelands along navigable waters in unincorporated areas, to be prepared by the counties in accordance with state guidelines and subject to state review and enforcement.

STATUS OF LAND USE POLICY
IN THE FIFTY STATES (as of 1974)

STATE	STUDY or PLAN	LEGISLATION	
		Proposed	Enacted
Wyoming		The Wyoming Conservation and Land Use Study Commission has drafted a significant comprehensive state land use act. It would create a permanent state land use commission to develop statewide land use goals and guidelines, identify critical areas and areas of more than local concern. Localities would develop plans consistent with state guidelines.	

The Commonwealth of Massachusetts
Department of Agriculture
Leverett Saltonstall Building, Government Center
100 Cambridge Street, Boston 02202

Warren Colby

13 February 1975

B. Statement before Saltonstall Sub-Committee on Land Use.

Those of us in the agricultural field feel a little bit like the Green Gremlin in the first cartoon. Half of the State's agricultural land having been lost to farming in the last twenty years, we think it is time this group set aside for now its discussions of how to settle the problems of who is to cover up what land and give a long hard look at the land itself and what it is capable of producing for us and our descendants.

The food and energy crunch has thrown a whole new light on the need for guarding our resource production near the markets, and the Governor's Commission on Food has spelled this out in considerable detail.

It would seem to us that any national land use planning should start with the land itself and its primary division into two categories. One, land which is capable of producing an annual renewable resource on which we or our descendants may require, and two, land which may safely be covered with the works of man without serious loss of resource potential.

Logic would seem to indicate this approach due to the irreversibility of land use decisions involving development on resourcelands. Farmland can grow up to woodland and forests can be returned to farming--these are reversible, but when farmland is covered with development, our options are gone. So are those of our grandchildren. See Cartoon ?.

Another point of apparent logic would seem to derive from our scandalous lack of open space land in or near our urban areas. Lack of appreciation of the human need for open space and the resultant lack of provision for its retention has resulted in social claustrophobia in our cities where open space is now retrieved only at great cost.

European nations have done much better where multiple use of open lands for farm and forest production, wildlife, water supply, air purification, and recreation amenities have been successfully combined with a high degree of sophistication. We believe that these matters should be addressed by this committee in the hope that we may avoid repetition of the trends and practices which have caused the deterioration of our congested areas.

We have discussed Land Use Planning and regulatory activities in certain other states. May I point out that there are other approaches being taken in other states more similar to Massachusetts that we should also look into. New Jersey, Maryland, New York, New Hampshire, Connecticut have had land use study groups similar to this which have come up with interesting reports, proposals, and legislation which may have more immediate application to our most pressing problems.

Now is not the time to go into details, but we would very much appreciate the time and opportunity to go into these more thoroughly. We are prepared to provide background material to your staff and to work with them in preparation for a more comprehensive presentation.

H. 452. Petition of Steve T. Chmura relative to extending the law relating to mineral resources of the Commonwealth.

H. 463. Petition of Richard R. Silva, David J. Lane and Norris W. Harris relative to establishing a coastal protection fund for the purpose of carrying our pollution abatement programs.

H. 648. Petition of Robert D. Wetmore relative to extending the law relating to mineral resources to the entire Commonwealth.

H. 815. Petition of Henry A. Walker relative to establishing a division of coastal zone management within Department of Environmental Quality Engineering of the Executive Office of Environmental Affairs.

H. 959. Petition of David J. Lane and Richard R. Silva for legislation to establish a division of coastal management within the Department of Environmental Quality Engineering of the Executive Office of Environmental Affairs.

H. 1549. Petition of Thomas F. Brownell and Robert I. Owens for legislation of civil forfeitures for violations of environmental laws.

H. 1970. Petition of Raymond F.Rourke relative to ascertaining the will of the people in which soft drinks and malt beverages are sold.

H. 2143. Petition of Terrence P. McCarthy for legislation to regulate the coastal conveyance of petroleum products and establishing the coastal protection fund.

H. 2146. Petition of Andrew S. Natsios, George R. Sprague and Edward L. Burke relative to authorizing conservation commissions to enforce certain provisions of law relative to removal, filling, dredging or altering land bordering on waters.

H. 2973. Petition of Joseph A. Sinnott that the State Geologist be authorized to make borings and field tests in the southeastern section of the Commonwealth for the purpose of determining the extent, quality and availability of coal deposits in such sectior

H. 3168. Petition of Richard E. Kendall and William M. Bulger for legislation to expand the liability of damage caused from oil pollution.

H. 3354. Petition of Bruce E. Wetherbee and others that provisions be made for the payment of royalties to the Commonwealth from drillers of subterranean fossil fuel, minerals or other natural substances of value.

H. 3908. Petition of Richard E. Kendall and William M. Bulger for legislation to establish the Massachusetts oil pollution control fund.

H. 3909. Petition of Robert H. Quinn and Thomas W. McGee relative to requiring a review and a report of all public lands held for natural resources purposes.

H. 1030. Petition of William M. Bulger and Richard E. Kendall for legislation to establish the Massachusetts oil pollution control fund.

H 1031. Petition of John W. Bullock for legislation to provide for control by the Commonwealth over off-shore oil deposits.

S. 1071. Petition of William L. Saltonstall, William M. Bulger, John F. Aylmer, members of the House of Representatives and others for legislation relative to the management, use, protection and development of coastal zone resources.

H. 644. Petition of Robert D. Wetmore for legislation to regulate development of regional impace in order to ensure responsible development and adequate conservation of the land, air and water resources of the Commonwealth.

H. 647. Petition of Robert D. Wetmore that the Secretary of Environmental Affairs be directed to prepare a comprehensive land use plan for theCommonwealth.

H. 808. Petition of Richard J. Dwinell for legislation to protect land and water in the jcounties of the Commonwealth and establishing a state land use program.

H. 1734. Petition of Garen N. Bresnick and Richard E. Landry for legislation to establish a comprehensive land use planning program.

H. 1967. Petition of Charles F. Flaherty, Jr., for a change in the law relative to environmental impact.

H. 1971. Petition of James E. Smith, Charles F. Flaherty,Jr., John F. Cusack, James G. Collins, John G. King, Carlton M. Viveiros, and John E. Murphy, Jr., for legislation to require energy impact statements prior to the construction of public buildings.

H. 2553. Petition of Henry A. Walker relative to protecting land and water in the counties of the Commonwealth and establishing a state land use program.

H. 3905. Petition of John S. Ames III, for legislation to clarify the law relative to conservation restrictions.

H. 3906. Petition of Fred F. Cain that the Department of Public Works be exempt from the law relative to the removal, filling and dredging of certain coastal areas and relative to environmental impace.

H. 3907. Petition of Francis W. Hatch,Jr., John S. AmesIII, Ann C. Gannett, Barbara E. Gray Jonathan L. Healy, William O. Robinson, Robert W. Gillette, George R. Sprague and William L. Saltonstall relative to the establishment of the land resource management act for the purpose of protecting water and land in certain areas of the Commonwealth.

S. 1076. Petition of Joseph F. Timilty and Elain Noble for legislation to clarify and amend certain environmental statutes of the Commonwealth.

S. 1080. Petition of B.Joseph Tully for legislation to extend the time that Lowell Technological Institute of Massachusetts shall report the results of a study of the economic effect and environmental impact of the construction and operation of an oil refinery in the vicinity of the cities of Lowell and Lawrence and the towns of Dracut and Methuen.

D. STATEMENT PRESENTED TO THE LEGISLATIVE SUB-COMMITTEE STUDYING LAND USE PLANNING BY JOHN D. BARRUS, DIRECTOR OF GOVERNMENTAL RELATIONS MASSACHUSETTS FARM BUREAU FEDERATION MARCH 13, 1975

I dislike to use the word "crisis" in a discussion of this nature, because this has been an over worked term. However, there can really be no other interpretation given to the economic conditions facing the Massachusetts farmer.

Thus, when land use discussions are held, it would be folly to talk about only the preservation of farm land and open spaces without giving attention to significant factors causing conversion of such lands to some other uses.

No group of people are more concerned with land use than the agriculturalists, who, for years, have been strong advocates of conservation measures. Their livelihood has depended upon wise land use measures.

Now, with society's pressures competing so aggressively for alternative uses of agricultural land, it is, in many instances, impossible for the land owner to withstand these pressures and, thus, excellent land for food production has been irreversibly lost and the prospects indicate such a trend will continue.

At a time when there is a clear and deep concern publicly expressed for adequate food for, not only, Massachusetts consumers, but for the world's population, it would seem prudent for any group studying land use planning, be it Federal, state, county or local government, to expend considerable effort exploring <u>all</u> the factors relating to a viable agricultural industry.

There are too many examples of good farmland going out of agricultural production and into a condition which will preclude it from ever being economically feasible to again be put to agricultural use. I think of tracts of prime land in the Connecticut valley being converted to shopping centers - housing developments, etc.

It would seem wise in any planning program relating to land use, that serious efforts be made to eliminate this sort of irreversible conversion of farm land.

Non-productive, poor agriculturally potential land can be converted into many uses, one after another as the need may arise, but there is no way the land, which has been changed by the removal or covering by cement of the top soil, can be again converted to agricultural production.

This, I believe, makes the treatment given to the agricultural lands in land use planning unique.

It deserves very special attention.

The Report of the Citizen Task Forces on Environmental Re-organization in 1972 dealt with the problem of conserving land for various environmentally sound uses.

I quote from one paragraph addressed to conserving the environment which is as follows:

"The Task Force holds that we should so manage each environment that a sustained yield is maintained within the limits imposed by the physical environment and the opportunities for using it as perceived by man. The product may be corn, tobacco or cranberries. It might be pasture or woodland. It could be watershed protection

or wildlife production. It could be food that will be carried off shore for marine organisms. It could be simple open space for aesthetic values. We must necessarily regard these products as part of our basic economic wealth."

At this time I would merely like to repeat what is sometimes overlooked or forgotten in discussions of economic wealth - Agricultural production is the creating of new wealth from the ground - unlike most other elements of our economy which merely transfer wealth throughout the system. This is another unique factor which must have consideration. Others, here, will discuss the economic factors at length.

The Task Force on Re-organization identified the critical problem of maintaining valuable lands -: "Privately owned lands which are being managed to produce food, fiber, water and wildlife are of real value to the entire community. Yet as urban and suburban developments spread, whether by sound planning or haphazard sprawl, the present land assessment systems, inheritance taxes and liability laws work to take these lands out of production and into intensive income uses. Farmers and forest owners are induced to sell by a combination of high taxes and lucrative offers for their land. The community loses not only the products of the land but also the variety of amenities that go with open pastures and cropland, forests and marshes. Loss of these natural and open environments in a suburban setting reduces the over-all environmental quality, attractiveness and resale value of the suburban development."

Not only are economic issues causing the conversion of farm land, but the burden of meeting the myriad of governmental regulations and impositions can, in many instances, lead to loss of good productive land.

The Task Force on Environmental management recognized this and stated -: "A regulatory scheme which is primarily designed to govern industry and commerce often does not take into account the special set of circumstances under which agriculture is called upon to operate. Sometimes regulations are adopted which are inherently impossible to observe or even are downright absurd from a farming standpoint. Others are overly restrictive or simply inapplicable because operational requirements of agriculture have not been considered fairly, if at all."

Thus, it becomes equally important to see that regulatory action by government, local zoning regulations and land use proposals by governmental agencies do result in a negative reaction to preserving farm land.

Clearly, no one would cut a factory in half by placing a public way through the building, but the same concern may not be shown to the farmer's "factory" when a highway is placed through his productive land.

Housing developments which suddenly appear on easily developable sites because a governmental unit does not want to expend some extra money for site preparation are another example of short-sighted planning.

The Report of the Governor's Commission on Food in 1974 addressed the problem -: "What can be done to prevent the rapid conversion of our best agricultural land to other uses and to put more land into food production?

"Solution - The development of a comprehensive land use plan for Massachusetts that incorporates the agricultural preserve concept and provides tax benefits for maintaining land in agriculture and tax penalties for changing land from agricultural to urban use.

"In order to accomplish the solution, a cabinet level land-use policy council should be created with the responsibility for developing a comprehensive land-use plan for the commonwealth within three years. In the meantime, conservation district boards of supervisors should be requested to place top priority on the preparation of county agricultural land use capability maps so that we can consider the agricultural capability in any proposed change in land use, and so that we can devise programs for preserving a prescribed percentage of our best agricultural land <u>in a way that will protect the equity of land owners.</u>"

The Commission on Food made it very clear for the necessity to have and maintain a viable agricultural industry in this state.

Another factor which emphasizes the "crisis" conditions which, I believe, now exist in the agricultural industry is the continuing loss of service industries and businesses relating to agriculture. There can be no other result from a loss of farmers below a certain point than the complete loss of these service businesses.

Thus, those left in agriculture below this point will be unable to continue because of lack of service.

It is <u>now</u> time to come to grips with the problem of the "endangered species" the Massachusetts farmer.

The "hand that feeds you" may not be around to "bite."

E. MASSACHUSETTS FOREST FACTS

Massachusetts is one of the most densely populated states in the country, inhabited by nearly 6 million people. It is an urban-industrial state with a total land area of 5,013,100 acres, 2,902,200 of them (59%) being classed as productive commercial forest.

FOREST LAND OWNERSHIP:

(A) Area -

Public - 365,400 acres	13%
Private -	
Forest Industry 30,100 acres	1%
Farmer owned 253,600 acres	9%
Other private 2,148,600 acres	77%
	100%

(B) Number of Owners*

3 - 100 acres - 28,000
100 - 500 acres - 4,000
More than 500 acres - 250
*(Estimated from Census data)

(C) Number of Massachusetts Tree Farms - 362
Number of Massachusetts Tree Farms acreage - 98,000

THE TIMBER RESOURCE:

(A) Net Volume of growing stock and sawtimber on commercial forest land
Softwoods - 3,535,200,000 Bd. ft.
(White Pine, Hemlock, Other)
Hardwoods - 3,056,800,000 Bd. ft.
(Oaks, Maples, Birches, etc.)
Total 6,592,000,000 Bd. ft.

(Of the above total 2,348,100,000 Bd. ft. is in material less than sawtimber size.)

Average annual net growth
(growth on sawtimber + ingrowth - cull and mortality) = 120,000,000 Bd. ft.

(B) Current estimated sawtimber annual harvest - 115,000,000 Bd. ft.

GROWTH POTENTIAL:

Massachusetts' woodlands are capable of producing 3 to 4 times the volume (and value) of wood fiber presently produced. Through management, cull and poor quality trees can be removed in favor of healthy, vigorous species of high quality. Full stocking can be attained.

EMPLOYMENT:

Wood manufacturing and forest industry employs an estimated 34,500 people in Massachusetts or 6% of the total employment in the state,

representing an annual payroll of 44 ½ million dollars. An estimated $168,000,000 in product value is created each year.

ASSOCIATED VALUES:

Other associated forest products values include fuelwood, mulch, maple syrup and Christmas tree production with estimated annual product values of $3,500,000.

The Massachusetts paper making industry* estimated in 1967 as contributing 500 billion dollars to GNP, is a separate aspect of the wood fiber economy with very little tie in to commercial timber production in the state. *(The Economic Importance of Timber in the United States - Dwight Hair, U.S.D.A., Forest Service, 1963).

ENVIRONMENTAL VALUES:

The non-timber, extremely difficult to measure, values of the forest far exceed the measurable board foot, wood product values. Included in this category are the influence of Massachusetts' forests on:

(1) water quality, quantity and flow rate of domestic and industrial water.
(2) climatic changes effected through interception of precipitation and solar radiation and by the influence of trees on wind and temperature.
(3) biologic values wherein trees intercept dust and cleanse air of impurities, reduce CO_2 levels and increase O.
(4) engineering values wherein trees prevent or retard soil erosion, reduce glare, muffle sound.
(5) architectural values of trees used to create privacy, screen objectional views, etc.
(6) aesthetic or amenity values - recreation, nature study, relaxation, etc.
(7) functional aspects of land use - greenbelts, open space.

Principal reference: The Timber Resources of Southern New England - U.S.D.A., Forest Service, 1974.

3/13/75
J.H. Noyes

F. MEMORANDUM

To: Senator William Saltonstall and Members of the Land Use Sub-Committee

From: Constantine Constantinides, Chief Planner, Office of State Planning

Subject: AN INTERGOVERNMENTAL SYSTEM FOR LAND USE PLANNING AND LAND MANAGEMENT

Date: March 27, 1975

Attached herewith for your review and comment is the proposed intergovernmental system for land use planning and land management developed under the State Land Use Project.

Two inter-related processes are presented. The first process, which could be implemented in part through an Executive Order, involves an intergovernmental approach to land use planning policy formulation and decision-making. The second process deals with restructuring land management in the state. It establishes, through legislation, a system for identifying, designating and regulating areas of critical planning/environmental concern and developments of more than local impact. Both processes involve the preparation and state certification of regional plans or programs.

The narratives attached herewith represent sections of the main reports to be published soon. Only five copies of the legislative package is provided in this transmission. However, additional copies will become available in the near future.

It need be emphasized that the recommendations submitted here represent the results of a study commissioned under the previous administration and therefore they do not necessarily reflect the views or policies of the present administration--at least not at this point in time.

By May 1st the following reports and research documents will be ready for circulation:

Principal Reports

- An Approach for Effective Interagency Coordination and Decision-Making for Land Use and Related Programs.
- A Proposal to Restructure Land Management (includes a legislative package).
- A Proposed System for Management Reuse and Disposition of State Real Property in Massachusetts.

Research Documents

- Analysis of Selected Critical Land Use Issues within Central Massachusetts (Res. Doc. #1).
- Selected Land Use Case Studies (Res. Doc. #2).

- An Analysis of the Impact of Key Land Management Techniques on Existing Massachusetts Laws (Res. Doc. #3).

- A Study on Transfer Development Rights (Res. Doc. #4).

- Building Moratoriums in Massachusetts: Their Uses, Effects and Legal Implications (published) (Res. Doc. #5).

Enc.
CC:ejs

A PROPOSED SYSTEM FOR COORDINATING LAND USE-RELATED PROGRAMS AND DECISIONS

A. Conceptual Framework

The basic goals of effective coordination of land use-related programs and decisions, greater efficiency in the use of program funds, and improved participation at all levels of the public and private sectors in land use planning and decision-making can best be achieved through an integrated planning approach that involves an essentially three-phased approach, as described below.

- PHASE I: Creation of a Lead Agency in Land Use

An essential prerequisite to the formulation of a statewide policy for coordinating programs and decisions affecting land use is the creation of a central state planning entity that will have lead responsibility in land use and overall planning policy functions at the state level. This agency should have legal standing and be directly responsible to the Chief Executive and his Cabinet. Designation of an independent line agency, or a semi-autonomous entity (i.e., Commission), is not recommended. Although an independent entity may provide a greater degree of objectivity and freedom from political influences, these attributes are far outweighed by the need to ensure that the state planning agency has the confidence and support of the Governor and his Cabinet, and is, therefore, in a better position to induce discipline in the state planning process.

Centralization of the state planning process in the context of this study does not mean usurpation of the planning functions of line agencies. Planning functions in such areas as transportation, national resources, housing, economic development, energy, and air and water quality should remain in the existing line agencies. However, in view of the fact that

land use is an interdisciplinary function and cuts across various related disciplines, it would be logical to place it in the state agency that is responsible for overall planning coordination, management, and policy formulation.

- PHASE II: Formulation of Statewide Policies, Requirements, and Planning Guidelines

The proposed statewide policies, requirements, and planning guidelines should be predicated on and reflect both (1) specific land use-related requirements and constraints on such programmatic areas as air and water quality, housing, economic development, transportation, recreation and open space, solid waste, and other public facility development; and (2) general policy guidelines in areas not now directly addressed by specific programs--for example, population growth and dispersion, regulation of critical areas of planning and environmental concern, developments of more than local impact (see report on "Restructure of Land Management in Massachusetts"), public participation in the planning process, and new community development.

As indicated above, lead responsibility for the formulation of statewide land use-related policies, requirements, and planning guidelines should be assumed by the state planning agency and be directly responsible to the Governor and his Cabinet, with inputs and review by appropriate state program agencies, regional planning commissions, local officials, and the public at large.

- PHASE III: Preparation and Adoption of a Land Use (Development) Plan for Each Region of the Commonwealth

A third and equally significant phase in the proposed state planning process involves the preparation and adoption of a land use (development) plan for each region in the Commonwealth. The process of developing such a plan should directly involve state, regional, and local agencies as well as the public at large. However, the primary responsibility might be most

effectively located at the regional level. The preparation and adoption of such a plan would be based upon the policy guidelines and requirements formulated by the state planning agency and approved by the Governor and his Cabinet (as noted in Phase II, above). Once developed, each regional plan would be reviewed by the state planning agency and, after reconciliation of any state, regional, and local differences, would be officially promulgated by the Governor with the consent of his Cabinet. Once adopted, all actions by government agencies at all levels as well as by the private sector would have to be compatible with the regional plan. Updating and other revisions of the plan would follow the same process as the initial development of the plan.

The option of a regional comprehensive plan has certain specific merits. First, decentralization of comprehensive land use planning would facilitate the incorporation and coordination of local concerns and priorities. Second, it might help to balance the concentration of state powers affecting local and areawide land development. The regional approach to land use planning assumes that the state will coordinate its own efforts and develop land use goals and policies that will be represented or incorporated into the regional comprehensive plan. In addition, a regional approach has the potential of a more broadly based citizen participation program.

In order for the regional comprehensive plan to effect state activities, it would have to be adopted by some process that ensures that statewide concerns regarding both the content and the legitimacy of the document have been met. No authority should be transferred to the regions or given to the plan during what may in fact be the prolonged transition period prior to the completion and adoption of the regional plan. However, provision should be made for closer coordination between state and regional planning during the transitional period, in view of the increasing capacity to review and comment on state activities given to the regional planning agency through the development of such a comprehensive plan. In addition, it should be noted that the regional comprehensive plan concept would not be a prerequisite

for more effective coordination of land use-related programs at the state level.

The enabling approach to regional land management suggested in the second study report (Volume II--A Proposal to Restructure Land Management in Massachusetts), if adopted, would provide for regional comprehensive plans that could serve as a basis for both the regulation of certain land uses and the direction of state programs. An enabling approach is also suggested for regional plans in this report, given the significance, cost, and varying degrees of difficulty of pulling together such a plan.

The proposed three-phased approach has the following advantages:

- It establishes a lead agency in land use and overall planning management, coordinating, and policy formulation at the state level.

- It provides a balanced, clearly defined, land use management process based on significant participation by all levels of government as well as by the general public.

- It results in a plan that reflects the requirements and concerns of all interested parties.

- It reduces the duplications, inconsistencies, and gaps that currently exist in land use-related activities.

What follows is a brief discussion of 11 key steps that should be included in the proposed three-phased planning process described here. Figure 3 presents these steps in a schematic form.

B. Key Steps in the Proposed Policy Formulation and Planning Process

- STEP 1: Creation of a Lead Agency on Land Use and Overall Planning Policy at the State Level

As recommended above, a central mechanism responsible for land use and planning policy functions is essential and should be established immediately through legislation, or by Executive Order and later to be legitimized through an act of the General Court. Such an agency must be vested with the process responsibility of formulating land use-related planning activities, guidelines, and standards for land use-related planning activities; planning management/coordination; and setting goals, objectives, and priorities for the state in concert with state agencies, regional planning commissions, local governments, and the public at large.

- STEP 2: Define Programmatic Land Use Requirements and Constraints

As discussed earlier, there is a host of state and federally funded programs that directly or indirectly impact the use of land. These programs range from essentially planning and/or regulatory programs to major construction programs. The purpose of this second step would be to identify and describe the land use-related requirements and constraints of these various major state programs. (A detailed description of areas of duplication and conflict in federal programs impacting land use is presented in Appendix A.)

Once developed, this information on land use requirements and constraints would be used in three ways. First, it would be reviewed by the Governor, Cabinet, and state planning agency in Steps 3 and 4 (see below) to identify and resolve any duplications, gaps, or other inconsistencies among (or within) state programs and policies. Second, it would provide an important data base for the formulation of basic state land use policies. And finally, the state program requirements and

constraints, as modified by the Governor, would become key guidelines for detailed land use planning at the regional and local levels.

Responsibility for the identification and definition of basic program requirements and constraints should be vested in the cognizant program agencies, much as they are held responsible for the initial development and justification of budgetary information. Indeed, the basic process of collecting land use-related requirements and constraints would be essentially similar in both purpose and scope to the budgetary process, and would serve as an important adjunct to the management of financial as well as physical resources.

STEP 3: Consolidate State Programs with Impacts on Land Use

The input of the separate state-level program agencies that exercise land use regulatory powers and constraints must be consolidated to show their combined impacts on land use decisions. The consolidation process would also identify major gaps, overlaps, and inconsistencies in the implementation of these programs and would be performed by the state planning agency. Some recommended methods for viewing these state-level programs collectively would be (1) to map existing or future (if known) geographic areas within the jurisdiction of a program, and (2) to develop a time line for all key dicision points for land use within each state program similar to the one drafted in Figure 2. Separate program area jurisdictions should be readily distinguishable from the mapping process to identify which programs overlap at what points. These overlaps would in turn provide the basis for potential areas of policy conflict. The time line approach has another advantage in that it would focus on potential conflict areas by identifying at what stage certain land use decisions are being or will be made.

STEP 4: Develop Policy Framework Incorporating Planning Guidelines for RPA's and Localities

In Step 4, the conflicts identified in Step 3 would be reconciled and integrated into an overall policy framework. This framework would reflect not only the collective impact of existing state-level programs on land use but also the more generalized goals of the state for land use policy making. The identification of conflict areas, gaps, and inconsistencies would be fed to the Governor and Cabinet by the state planning agency. The Governor would have ultimate responsibility for resolving the existing problems and for formulating and promulgating appropriate statewide land use policy.

The results of the reconciliation process would be fed back to the state planning agency as the foundation for developing guidelines for use in the development of land use plans at the regional level. These guidelines would include the following, at a minimum:

--Compendium of relevant statewide policies and program requirements.

--Suggested and required content of regional plan.

--Suggested and required areas for research and data collection.

--Schedule of key decision points in plan formulation.

--Requirements for citizen participation.

--Mechanism for updating and changing the plan.

--Funding availability and constraints.

STEP 5: Review of Policy Framework at Regional and Local Levels

Prior to the finalization of a policy framework, the regional and local levels would have the opportunity to review the proposed policy framework, consisting of a set of goals and objectives and the proposed set of guidelines for land use plan preparation. The state planning agency would oversee the circulation of materials to appropriate parties.

Comments might be solicited either in writing or through a public hearing at a reasonable interval from the time of distribution. All comments coming from the regional and local levels would be fed back up the system to the Cabinet under the coordination of the state planning agency. Final agreement would be made at the state level on the substance of the policy framework, subject to the approval of the Cabinet and Governor.

STEP 6: Prepare Regional Planning Guidelines for Local Boards, Develop Regional Land Use Data Base

Upon receipt of the state guidelines for regional land use plan preparation, the regional planning commission would require specific inputs from the localities within their jurisdiction. These inputs might be in the form of existing plans or specific statistical information. Whatever needs are identified at the regional level, it is imperative that they be reported consistently. Criteria for consistency must be spelled out not only within a specific region but also among regions.

The state planning agency would oversee the development of a consistent land use data base statewide. It would take a lead role in evaluating existing information sources, definitions of terms, methodologies for measuring the projection of certain parameters, and so forth. The pros and cons of each would be presented to the regional planning commissions at a meeting of their representatives. Regional representatives would then agree upon an acceptable set of inputs to ensure consistency in the development of regional land use plans.

- STEP 7: Prepare Local Land Use Inputs into Regional Plan

Each locality would take an active part in the formulation of a regional plan in two ways. First of all, it would respond to the specific needs identified by the regional planning commission for satisfying the guidelines and developing the land use data base. Second, it would assist in framing the region's objectives, policies, and standards regarding proposed or foreseeable changes. Each locality should identify its own objectives, policies, and standards and potential problem areas for a later merging of these with the adopted state land use policy framework. Existing problems and issues relating to land use that are of greater than local concern should also be surfaced. The participation of local citizens should be required in the drafting of objectives, policies, and standards, and in identifying potential areas of conflict between local and regional land use planning.

- STEP 8: Prepare Regional Land Use Plan and Updating Process

Each region would combine the materials submitted by each locality within its jurisdiction into an overall plan that would reflect, to the maximum extent possible, the realization of local policies and objectives and the resolution of existing local problems and issues. Each plan would be totally responsive to the guidelines for regional land use plan preparation.

A land use plan would contain, at a minimum:

--A statement of objectives, policies, and standards regarding proposed or foreseeable changes in land use patterns.

--A list of current outstanding issues relating to development and to physical and environmental deterioration.

--Major risks and jeopardies in realizing the objectives, policies, and standards as perceived at the regional and/or local levels.

--Procedures for developing a plan, with designation of required inputs, areas of research, and a mechanism for citizen participation.

--Procedures for approving and implementing the plan.

STEP 9: Review and Distribute of Regional Plans

The state planning agency would collect all regional plans to be submitted and review them to ensure conformity with the policy framework, particularly the guidelines for the development of regional plans. Upon acceptance by the state planning agency, the regional plans would be submitted to the Governor and his Cabinet for review. The state planning agency would also oversee the distribution of copies of the plan to all state agencies with land use-related functions as well as distribution back to the regions and localities.

STEP 10: Vertical Review and Sign-Off--State Program Agencies, RPA's, Localities

The state program agencies would review all regional land use plans to ensure consistency with their respective regulatory powers. Each agency would grant an approval if it determines a plan to be consistent. If a problem is identified, the dissenting agency should issue comments to the region in question and to the state planning agency. The region and the state agency should reach an accord on the problem and channel whatever changes they agree upon to the state planning agency for distribution. Simultaneous with the review by state program agencies, the regions localities and local citizens should also have the opportunity to comment on the substance of the plan. Written comments should be directed to the appropriate region, with copies of these comments forwarded to the state planning agency. Necessary revisions would be incorporated into the plans.

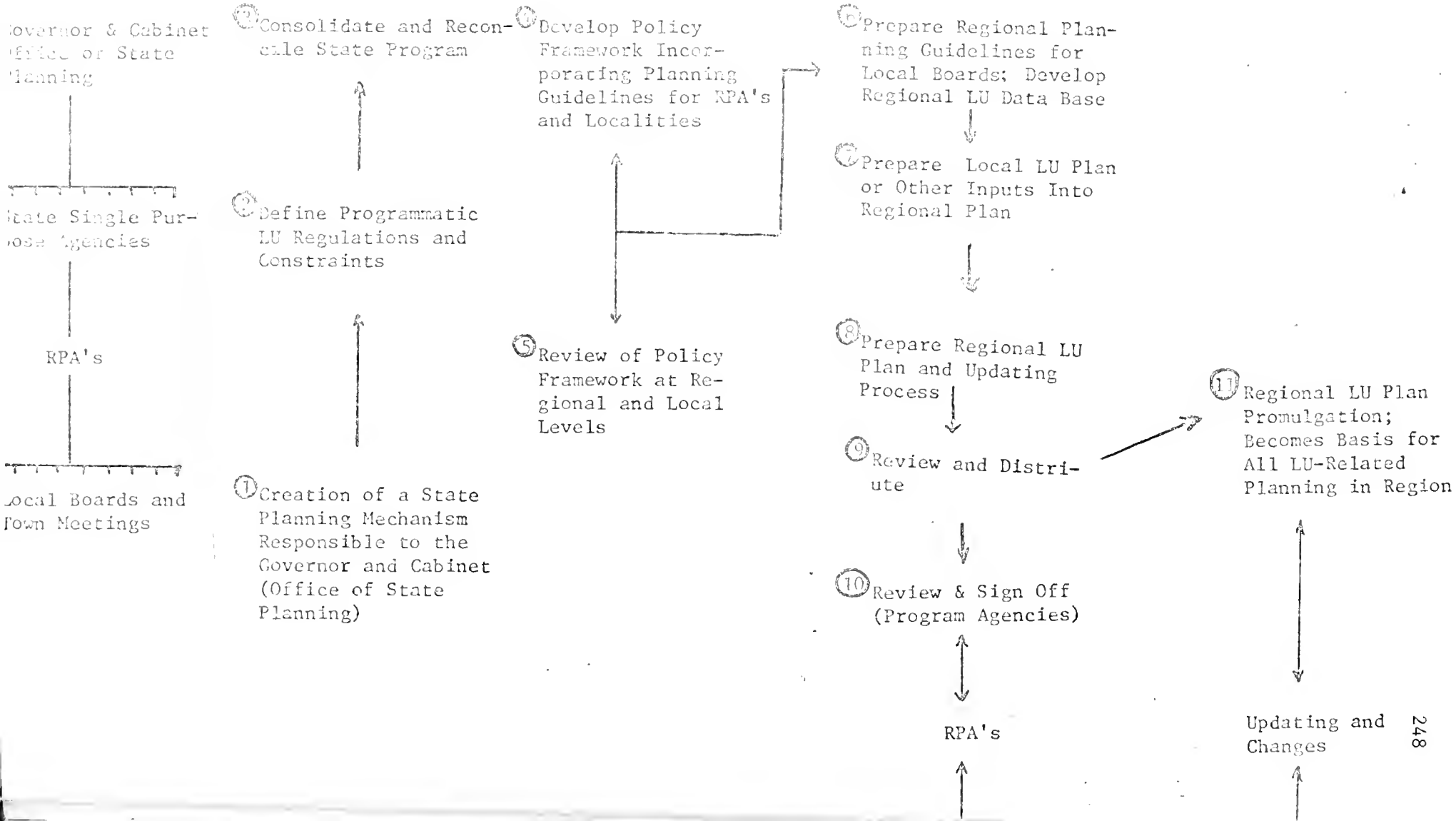
- STEP 11: Regional Land Use Plan Promulgation Becomes Basis for All Land Use-Related Planning in Region

The state planning agency would present the revised versions of the regional plans, together with all comments received from state agencies, regions, localities, and other interests, to the Governor and Cabinet for final promulgation. Upon promulgation by the Governor and/or Legislature, each regional land use plan would become the basis for all land use-related planning in the region, subject to whatever updating and changes may occur over time. The process for updating and changing would be an integral part of each plan and hence would be promulgated as well.

Figure 3

PROPOSED APPROACH FOR A MASSACHUSETTS

LAND USE PLANNING PROCESS



The following model describes in narrative form how a restructuring of land management system would operate.

Summary

The model system provides for state and regional regulatory authority over private and municipal development. Regional systems would be created by legislative mandate, or, alternatively, regions would be enabled to create their own land use management systems within the constraints of the legislation and subject to approval by a State Land Use Board, which oversees the system and performs an adjudicatory function in it. The regulations are limited to critical areas and developments of regional or state impact. Regions must have comprehensive planning within a fixed period and make their regulations consistent with it or lose regulatory powers. The State Land Use Board would from the beginning have authority analogous to that of the regions in cases involving issues of statewide concern. Local enabling laws are not affected by the new legislation, but state regulatory statutes, such as the Wetlands Protection Act and Chapter 774, are integrated with it. State or regional land use permits are comprehensive, satisfying all currently existing state and local regulations.

1. Creation of the System

State level. A State Land Use Board is created to interpret the legislation's regulatory policy, to adopt procedural rules, to oversee the system, and to regulate development and areas involving issues of statewide concern. The Board would have a full-time staff, drawn from the Office of State Planning, to assist it in these tasks. In its capacity as overseer of the system, it would review regional planning programs and regionally adopted regulatory standards and criteria, and make other binding interpretations on matters of policy and procedure.

The Board's administrative duties might be transferred to the Office of State Planning, thus linking the land management and policy-coordinative systems. Its adjudicatory role would be retained, except perhaps with regard to state agency projects.

Members of the State Land Use Board would be appointed by the Governor. The Board would not be part of the hierarchy between the Governor and the line agencies.

Regional level. Regional level participation in the system could either be enabled or mandated, at the option of the legislature. Once established, enabled regional systems would operate in no way differently from systems created by mandating legislation.

Enabling option: The existing Regional Planning Agencies, with the assistance of the State Land Use Board, are enabled to design land use systems for their regions, establishing a permanent Regional Land Use Commission and specifying its powers and procedures. For either planning or regulation or both, Regional Planning Agencies may include as part of their proposed system the subdivision of the regional planning district, or, with the agreement of the other Regional Planning Agencies involved, establishment of the Regional Land Use Commission at the Substate District level in lieu of two or more separate commissions at the regional level.

Representation guidelines would be established regarding interests to be represented, one-man-one vote, and state level participation.

The proposed regional system must be approved by the State Land Use Board and then endorsed by regional referendum. The state has no power to promulgate a system if regions fail to do so.

Mandating option: Alternatively, the legislation would simply establish Regional Land Use Commissions. Regional choice of alternative arrangements for boundary changes, interface with existing Regional Planning Agencies, and administrative organization might be provided.

It is possible that combined or separate legislation creating both a state level coordinative system and a land management system will be passed. A coordinative system would require regional comprehensive planning programs; the planning program requirements of the coordinative and land management systems should be the same, particularly with regard to the degree of detail required. If the land managment system is enabled rather than mandated, and a region declines to participate, the planning program required for coordination could be the responsibility of the Regional Planning Agency. Legislation to create a coordinative system should provide for this situation.

2. Regulation

Regulatory approach. Developments of regional importance (DRI's), and areas of critical planning concern (ACPC's) (defined broadly to include environmental concern), would all be subject to regulations complying with guidelines adopted by the Regional Land Use Commission. Those regulations could be administered by Municipal Planning Boards or an alternative locally approved agency, through a process employing hearings, discretionary review, and the power to attach conditions (all in a manner analogous to Special Permit procedures), and simultaneous issuance of all local permits in a manner analogous to Chapter 774 procedings (except also subsuming Chapter 774 and Wetlands Act jurisdiction). Appeals of local approval or denial could be taken by any party with standing (including the local chief executive) to the Regional Land Use Commission.

Developments of state importance would be regulated in a like manner by the State Land Use Board. Under an enabling approach, ACPC's of statewide significance would be regulated by the State Land Use Board until a regional commission is in place, after which time the State Board's role would be simply to hear appeals of regional determinations involving such areas.

Interim standards and criteria. Upon approval or establishment of the regional system and its organization, the Regional Land Use Commission would adopt interim standards and criteria for identifying and regulating critical areas and DRI's, subject to review and approval by the State Land Use Board, but limited to private development, and limited to existing local control techniques. The State Land Use Board would adopt analogous standards and criteria.

Comprehensive planning. The legislation might provide that planning and regulatory functions are either performed by a consolidated agency or assigned to separate agencies. In either case, comprehensive planning would be required; successful establishment of the planning activities and revision of the interim regulations consistent with the policies and strategies of the planning program would be required within a given period of time. Upon review and approval of the comprehensive planning program and revised regulations, the regional system would be fully certified for six years. Only constitutional limits on police power would constrain regulations adoptable following certification, not existing enabling laws. Planning updates and recertification would be necessary at six year intervals.

Required comprehensive planning would be clearly defined in the statute. The product of the planning process will not be master plans, mapping the so-called "best use" of all land, but policies, priorities, and short-term implementation strategies based on studies of regional land capabilities and suitabilities and regional needs. Continuity between the plans of adjoining regions and consistency with state policies and plans will be achieved during state level review.

3. Administration

Designation and regulation of critical areas. The authority to designate areas of critical planning concern to a region or the state would lie with the Regional Land Use Commission. Areas of certain types would be designatable only

after the regional system has been fully certified, except on an emergency basis. The regions would have some latitude in deciding what groups have standing to nominate critical areas, but municipalities and state agencies would be guaranteed the right to nominate. Hearings would be required before designation, with the usual procedural requirements; parties with standing could testify and submit recommendations.

Concurrent with designation of an area, interim regulations and guidelines would be established describing generally the type of permanent regulations required to fulfill the purposes of designation. Local governments would then adopt appropriate regulations using their powers under the General Laws or extraordinary powers authorized by the Regional Commission. The Regional Commission would promulgate regulations if local governments fail to act. Once regulations are adopted, permission to develop in these areas would be administered locally as earlier described.

Under an enabled approach, the State Land Use Board could act in place of a Regional Commission to protect areas of critical concern to the state until a region had established its own Commission.

Developments of regional importance. Acceptible standards and criteria for identifying and evaluating developments of regional importance are a requirement for certification of the regional system. Permit-granting authority for DRI's could be lodged in local governments, with easy appeal for the Regional Commission provided.

An option to by-pass the local level might be given to the applicant. A public hearing at which the regional planning department, state agencies, municipalities, and other interested parties with standing are represented would be required, and permission to develop could be appropriately conditioned. The permission could be comprehensive, in the manner of Chapter 774. Developments of statewide importance would be regulated directly the State Land Use Board.

4. Appeal

Developments of regional or state importance. In regions where primary responsibility for DRI review is delegated to local governments, appeals of local determinations relative to DRI's could be taken to the Regional Commission. Developments of state importance would be reviewed directly by the State Land Use Board, and thus no administrative appeal procedure would normally be needed. Final determinations by Regional Commissions or the Board could be appealed in the courts.

Areas of critical planning concern. Regional Land Use Commissions would have primary responsibilities to designate and oversee the regulation of areas of concern to both the region and the state. If areas of concern to the state were involved a Commission's determination could be appealed to the State Land Use Board. Judicial relief of final administrative determinations would be available.

Critical area regulations would become part of local by-laws and regulations (after Regional Commission or State Land Use Board approval), and thus relief from local determinations under these regulations would be by means of the procedures normally applicable to local controls. However, the Regional Commissions and State Land Use Board would be given standing to file appeals under those procedures.

5. Public Developments

The system might or might not have regulatory authority over state agency-initiated projects affecting land use. Such authority would best follow the establishment of a state-level coordinative system, which would insure that agency projects are consistent with regional and state plans and policies. Regulatory review by the management system would then presume consistency and be confined to an examination of details of site planning or alignment.

Developments by municipal governments or special districts would be regulated in the same manner as privately sponsored projects.

6. Enhancement of Local Capabilities

Consistency of municipal plans with certified comprehensive regional planning programs would not be required, but, if such consistency were voluntarily achieved municipalities would be enabled to adopt Ramapo-style growth phasing regulations and to approve open space land for assessment at agricultural use value. Subsequent grants of power to local governments might also be tied to Regional Commission approval of local planning programs.