DISCUSSION DRAFT

STATES AND TITLE VII OF THE
HOUSING AND NEW COMMUNITY
DEVELOPMENT ACT OF 1970

November 7, 1975

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for the
Academy for Contemporary Problems
INDEX

I. New Communities and Federal Policies
   A. Title VII
   B. Visibility

II. New Communities, Community Development and Local Government
   A. The Critical Role of Local Government
   B. Local Government Performance

III. The State Concern and Roles in New Community Development
   A. Varied Growth Patterns
   B. State Concern for Growth Management
   C. State Growth Management Tools

IV. The State Experience in New Community Development
   A. New Community Policies
   B. Land Use, Environmental Programs and New Communities
   C. Capital Improvements and New Communities
   D. State Planning and the New Community Development Process

V. Alternatives
Large-scale development and new communities have achieved some successes in phased development planning, intergovernmental cooperation, mixed housing and sound physical and environmental design. The expectations held of new communities, though perhaps impossibly high, have been undermined by the loss of federal government program supports as the Administration redefined the role of the Federal Government in all domestic programs. The "New Federalism" undercut the decade of governmental centralism and removed government from the role of catalyst to that of inducer and support for private sector and local government initiatives. Though this new philosophy had programmatic consequences for community development in general, it created a particularly severe burden for Title VII developers who had assumed special social and economic objectives for their projects. The suspension of categorical grants in favor of general revenue sharing both reduced the total flow of federal community development dollars, and resulted in a bias toward existing communities. The community development block grants program continues to short-change new community projects and the communities impacted by them. The moratorium on housing programs removed the major means by which developers were able to offer housing for low- and moderate-income housing.
A. Title VII

Title VII new communities were doubly affected by the change in federal policy. The limited commitment of the Administration to a congressional program resulted in a low profile for the new communities program within HUD, a fact which undermined efforts to coordinate new community projects with programs and funding within other federal agencies. More severe was the refusal to seek full funding of the various support and incentive programs. Congress signaled its clear intent that state and local governments should participate in the program by the program supports which include the following:

- 100 percent loan guarantees for public developers;
- interest differential grants for public developers;
- interest payment loans;
- public service grants to public bodies;
- supplementary grants to public bodies for public facilities;
- required approval of new community plans in all state and local reviews;
- land acquisition grants, up to 75%, to state and local public bodies;
- technical assistance and special planning assistance;
- increased federal share of '701' grants used in approved new community planning.
B. Visibility

The goals and incentives are significant; but Title VII was not a top priority in Congress, and thus was passed without the debate, scrutiny, or compromises which characterize more controversial issues. Neither was the legislation highly visible to state government officials; and the incentives for cooperative state and local government actions reflected more a "hope" than a sound assessment based upon a reading of state and local policies and activities. Though support for private development indebtedness was forthcoming; the various programs to encourage state and local government capacity and involvement were terminated or never funded. The failure to include state governments in the legislative process, coupled with the failure to implement incentives for state and local participation, reflects a federal government misunderstanding of the state role in the community development process.

II. NEW COMMUNITIES, COMMUNITY DEVELOPMENT AND LOCAL GOVERNMENTS

A. The Critical Role of Local Government

The current debate over traditional pro-growth attitudes within the nation, coupled with the controversy of the administration's failure to implement the Title VII program in toto raises more fundamental issues of new communities and community development. Though current federal policy
regulates government to a subordinate role and views the private sector as the key actor in the new community development process, the scale of new community projects reveals the critical role played by local government in the community development process (zoning, provision or enabling the financing of public services and facilities, initial environmental reviews). Such large-scale developments reveal the limited capacity and willingness of local governments to plan for, finance and deliver the infrastructure and services required for such projects.

B. Local Government Performance

The frequent resistance of local officials to working cooperatively with new community developers reflects a fear of significant growth and social change, as well as a limited capacity to respond to new and ever-increasing demands. Local governments in the fringe or non-metro areas typically chosen by new community developers frequently lack the staff expertise to conduct their own or analyze the developer's economic, land use, utilities, and social needs projections and planning. Unable to generate internal studies, and often hesitant to accept a developer's statistics, local officials may delay their consideration of the proposals or condition their approvals upon the developer's assumption of a greater share of the cost of providing basic services. Equally important is the structural problem which hampers local governments' ability to respond to
large-scale developments. Large-scale developments typically impinge directly upon several local and sub-local jurisdictions (municipalities, counties, school districts, sanitary districts), and the number increases when those indirectly affected by the project must be included in reviews and approvals. Yet the mechanisms to resolve differences among the various jurisdictions are typically weak or absent, and the developer frequently assumes the time-consuming and costly role of mediator.

III. THE STATE CONCERN AND ROLES IN NEW COMMUNITY DEVELOPMENT

While highlighting the varied and important roles of government in community development, the new community experience highlights the pivotal role of the state. Community development has become a regional phenomenon in mobile America. Decisions by one jurisdiction on the planning, financing, and provision of public infrastructure and services have repercussions for the growth potential and burdens of a neighboring jurisdiction. The number of forces and public actors involved in community development, and the complexity of their relationships require the involvement of a governmental unit less subject to the understandably parochial outlook of local government, more flexible to local conditions than is the federal government, and with the authority to encourage coordination of the multiple actors. That governmental unit is the State.
A. Varied Growth Patterns

National economic and demographic trends create varied growth patterns which create different pressures upon the State. The recent slowing of central city decline and the evidence of non-metro growth suggest that community development programs must be re-evaluated to reflect this shift. The pressures of rapid growth associated with energy resource development raise the problem of developing the front end capital and local capacity for community development. The economic decline of certain areas creates problems of attracting a tax base sufficient to support a population which continues to grow. For other areas the problem is not rapid or declining growth, but a steady growth and sprawling settlement pattern which hampers the efficient and effective use of land and delivery of services.

B. State Concern for Growth Management

Regardless of the specific content of federal new community policies, large-scale development will occur which responds to or exacerabates the varied growth pressures. States, as repositories of the police power are key actors in community development activities, and must deal with the consequences of federal new community programs and private development projects.

Though the federal role in setting criteria and in funding community development programs is highly visible, the State plays a critical role in the allocation of federal funds.
New Federalism increases the importance of state and local governments in devising community development policies and programs most appropriate to the needs and opportunities within various substate regions. In contrast to the previous "grantsmanship", decentralization requires greater planning and administrative capability, and offers greater potential for coordination of related programs and for flexible responses.

C. State Growth Management Tools

The renewed awareness of the State's role in community development and growth, and the interest of many States in growth management highlight the mutually supportive relationship which potentially exists between new community development and state government. States are the repository of land use and capital improvements tools; and are the governmental unit able to create a comprehensive planning framework to link the varied actors and programs into a coordinated community development process. New community projects provide an arena in which state officials can reassess the State's role in community development and can hone the art of linking capital improvements, land use programs, and comprehensive planning into a growth management process.
IV. THE STATE EXPERIENCE IN NEW COMMUNITY DEVELOPMENT

*States are actively involved in large scale community development,* regardless of whether the involvement reflects a recognition of the relationship between new community needs and state growth objectives. There is evidence that officials in many States are aware of this relationship and seek to develop it to the mutual benefit of the State and the new community. Though several States have adopted explicit new communities policies, the greatest promise lies in coordinating new communities with state initiatives in land use and environmental regulation, capital improvements, and comprehensive planning.

A. New Community Policies

Formal policies recognizing or supporting the development of new communities have been adopted by legislatures in eight States: New York, Ohio, Kentucky, Arizona, Georgia, Louisiana, Tennessee and Florida. The type of new community policy, and the State role it defines varies among these States in the extent to which it both addresses the special needs of new community developers (especially site acquisition and front-end financing) and harnesses new community building to state goals and the public interest. A common role in each state policy is that of facilitator, and Legislation defines a process by which general improvements districts
for the development of new communities are created. A second role is regulatory, and the major emphasis of the policy is to provide state administrative oversight or safeguards for the local governments impacted by new community development. A third role is supportive, whereby legislation authorizes the expenditure of public funds in support of new communities meeting specified criteria.

B. Land Use, Environmental Programs and New Communities

Land, its assembly, cost and zoning, is a key component of large scale development. The growing state initiatives in regulation of land use and environmental affairs affects the community development process significantly enough to constitute a "de facto" state policy for new community development. The consequences of the varied state activities in this field are both a bane and a boon to developers of large scale, planned communities; for only in a few instances are state policies cognizant of the special relationship between large scale, planned development and the public oversight and regulation of the use of land and natural resources. New communities are susceptible to the growing range of state and local activities to influence the use of land and natural resources due to the scale and comprehensiveness of their development. More than a power plant or an industrial facility, balanced new communities touch on the full range of local and state police powers to protect the general welfare: land, air, water, solid waste, public safety and public utilities. Even as they subject large scale developments to regulation and
review, state land use and environmental policies create guidelines and
review procedures which protect such projects from the vagaries of local
government decisions. As a highly visible example of growth pressures, new
community development exacerbates the growth/nongrowth debate, and highlights
the politically controversial issue of how authority over land and natural
resource use and management shall be allocated between the state and local
units of government which have traditionally exercised community development
police powers.

C. Capital Improvements and New Communities

The magnitude and distribution of public and private capital investments
is a much discussed, but seldom analyzed factor in the kind, quality and
location of community infrastructure. They are major influences on employ-
ment opportunity and population distribution patterns, on land use, and on
state economic development potential. While some observers view capital
improvements as a major tool for growth policy, others argue that they are
of marginal value to public officials who attempt to direct growth against
the historical trends toward metropolitan concentration. Though the debate
remains unresolved, many state and local governments do attempt to use
public capital improvements as a means to cope with growth. Their efforts
are not always in harmony. While several States use capital improvements
planning and budgeting as one tool for more effective and efficient growth
management, many local governments use their control over public works as
a weapon to stop or slow growth.
New communities, as major providers and users of community infrastructure are significantly affected by public decisions regarding capital improvements. The degree of coordination of capital improvements decisions among all levels of government and the private sector can be a major factor in the efficient and effective delivery of public services to the community and in the economic feasibility of planned, large-scale development. Yet state efforts at capital improvements programming for growth management is hampered by the continued strong federal reliance on categorical grants and on formula allocation for block grants. Such allocation criteria continue the program bias toward remedial activities in existing communities, and reinforces functional agency specific decisions within the States.

D. State Planning and the New Community Development Process

Activities in land use, environmental and capital improvements programs do give the State significant influences over new and more traditional community development. Planning by functional agencies is an important tool for the efficient and effective provision of the community infrastructure and services. Yet such focused planning hampers the state's ability to leverage related policies and programs for maximum benefit. Just as the concept of state economic planning has shifted from a focus on industrial location and expansion to resource allocation and optimization, state planning is viewed as a comprehensive integrated process of goal definition, problem analysis, policy development, program design, resource allocation and performance evaluation. State planning is a mechanism to enhance the state's capability to plan and manage the growth process, not solely a device to
produce concrete products of a substantive nature. The still strong role of federal assistance programs in growth and community development, and the inconsistencies in federal guidelines make a strong state process of orchestration and integration imperative for optimal performance.

The concept of a comprehensive state planning process is translated into linked individual components: (1) state policy planning; (2) interagency functional planning; (3) agency programming planning; (4) budgeting; (5) community affairs; (7) coordination and legislative oversight and performance evaluation. Though the particular organizational structure may vary among states, the required interaction of the various components in each stage of the process calls for coordination with all governmental units and levels. A major strength of an effective state planning process is the active participation of local governments through multi-purpose regional councils. Such councils, and the meshing of state functional programs with the substate jurisdictions provide the opportunity to enlarge the perspective and improve the communication links of local officials and to decentralize state program management.

A state planning process must be actively used and refined for maximum effectiveness. Federal requirements of A-95 and EIS procedures are one set of tools. New community projects can be even more effective catalysts and refiners of a state planning process. The new community development process incorporates A-95 and EIS; yet, it goes even further. It is a comprehensive physical, social and economic planning process conducted by the private sector. The quality of the final product—the new community—reflects not only the private sector's planning capability; but as important, the quality of its linkages to government's planning and performance.
Just as successful new community planning requires cooperative and coordinated state decisions, the state can use new community developments as a lever to achieve various growth and development goals. With an effective planning process, state officials are better able to assess the contribution which a specific or potential large scale development project to state policy objectives. If a congruence of state goals and new community needs exists, then state officials may determine that state involvement is desirable. An effective state planning process then improves the state's ability to provide coordinated incentives and program supports for the optimal benefit to the state and the new community.

A new community project, whether privately or publically financed, can be an effective mechanism through which to channel state incentives to locate and expand economic and population growth into points consistent with social and environmental concerns. It may also complement state efforts to induce residents and businesses in existing environmentally and economically marginal and obsolete communities (rural and urban) to resettle into designated growth points. Officials in several States recognize this new community state growth management relationship, and are acting to exploit it.
In Utah, the community development impacts associated with the proposed Kaiparowits project have received the attention of the state's effective state planning process; and a series of related executive decisions and legislative bills adopted to increase state and local governments' capacity to act. In Ohio, surplus state property, the Dayton State Farm Hospital, provided the catalyst for coordinated state, federal and local efforts to make the "recycled" property into a large scale community development project contributing to the growth potential of the metro area. In New York, new community projects provide state officials already committed to coordinated planning and programming with the opportunity to refine and illustrate the effectiveness of comprehensive planning and growth management techniques.
V. ALTERNATIVES

Based upon the findings of a study of the State's role in new community development, the following range of recommendations for legislative amendments are presented.

Alternative I: State Co-Application

State co-application with a new communities proposal shall be a precondition for a Title VII designation.

Purpose:

Co-application will define the degree, type and terms of state, local and federal government support of and participation in the new community project. The process will ensure that a developer does not commit state, local or federal funds and programs to a project without clear evidence of public sector agreement, evaluation, and coordinated capital programming.

Definition:

(1) State review of the developer's pre-application to New Communities Administration is required to insure that the public sector implications of the proposed project have been evaluated, and are found by state officials to be within the State's interests.

(2) Following state and preliminary NCA approval, federal planning assistance shall be granted to the State, to be allocated among the appropriate state, substate and local governmental bodies to institute an intergovernmental and interagency planning process in which the public-private sector relationship shall be defined. An intergovernmental, interagency task force is an appropriate body to initiate the planning process. The task force shall function as project's central clearinghouse for federal, state, and developer negotiations and coordination. In addition, it shall
coordinate all reviews incidence to the project in conjunction with the regular A-95 and EIS review channels. During the planning process, the respective roles of the developer, local government, substate districts, and state government agencies shall be defined. When necessary, the proposed new community project shall be revised to reflect these agreed-upon roles.

(3) A memorandum of agreement shall be entered into by the state, local governments, and developer, setting forth the respective commitments of state, local governments, and developer which can be expected by each party, contingent upon federal agency funds. The memorandum will indicate the areas of the development process in which state or local participation is currently problematic.

(4) The memorandum of agreement shall be a required component of the final application submitted to New Communities Administration.

(5) Before final application approval, the New Communities Administration shall issue a federal interagency agreement in support of the new community proposal, specifying the availability and timing of federal agency funding.
Alternative II: Requirements for State Growth Policy Activities

Given the importance of state comprehensive planning and program performance to large-scale community development, federally supported new communities shall, to the greatest extent possible, be located in States in which growth policy objectives and growth management techniques have been implemented or are being developed by state officials.

Findings:

(1) As developments with regional impacts, new communities are part of a broad range of growth-related activities. The tendency to separate the development of new communities from on-going growth and community development activities is a contributing factor to the difficulties experienced by developers.

(2) There exists only modest state experience in new communities legislation, ranging from endorsement of direct state developer activities to procedures for creation of new community districts. Current evidence indicates that such legislation is no guarantee of a State's commitment to new community development.

(3) Supportive state participation is occurring, without benefit of a formal new community policy, in States where officials recognize the impact on and potential of new communities for state growth objectives and growth management efforts; and where the new communities activity is integrated into the broader state planning process.
Alternative III: Research for Suggested State New Communities Policies

A study should be undertaken to examine alternative models and possible suggested state legislation, for integrating state growth policies with new community policies. The study must be sensitive to the variety of state contexts and growth situations in which new communities occur. It should indicate the conditions or situations which dictate various state strategies and roles. Particular consideration must be given to the relevance of new communities and the following:

- boom growth associated with energy resource development;
- central city re-development;
- state community development policies;
- state economic development and capital improvements programming;
- state comprehensive planning;
- state growth and land use policies and management techniques.