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INTRODUCTION

We are all affected by how our nation grows and develops. How those decisions are made determines our future. Recently, much of our nation's growth has taken place in the suburbs; at the same time those suburbs have excluded poor and minority citizens, denying them the benefits of that growth.

In August 1970, the U.S. Commission on Civil Rights held 3 days of hearings on the racial implications of suburban development in Baltimore County. At the close of those hearings, the Maryland Advisory Committee to the U.S. Commission on Civil Rights undertook the responsibility to follow up on the Commission's investigations.

Part of this followup involved monitoring the controversy that ensued when Baltimore County sought water, sewer, and open space funds from the U.S. Department of Housing and Urban Development (HUD) in 1970. HUD had informed the County that its planning process was not adequate to meet the planning standards for granting water and sewer funds. As a result, HUD imposed a freeze on the \$2 million in grants that the County was seeking.¹

Between 1970 and 1973, the freeze was lifted and reimposed several times. It was lifted in 1971 when the County agreed to submit to HUD a design for its Office of

1. U.S. Department of Housing and Urban Development, Baltimore Area Office, press release, May 22, 1972.

Planning and Zoning, and reimposed when the County failed to submit that design on time. The design was submitted in late 1971 and found incomplete. HUD noted several major problem areas, including housing for low-income and minority citizens, for which the County had failed to develop a meaningful program.

HUD asked the County to undertake an educational program to reduce hostility toward open housing in the community and prepare a plan for increasing housing opportunities to meet HUD planning standards. In 1972 the County submitted its educational program, which community groups labeled clearly inadequate and designed to fail. Yet HUD approved it because of County Executive Dale Anderson's professed commitment to executing the plan. The freeze was lifted and in October 1972 HUD signed a contract with the County for the grant monies sought. The grant included provisions requiring the County to complete its Housing Plan by June 30, 1973, and submit progress reports on both the educational plan and the housing plan.

The progress reports were inadequate and late; the Housing Plan was submitted on time, but was clearly inadequate. It failed to address the housing needs of the County, especially the needs of low-income and minority residents. Rather, it attempted to justify past County policy. In November 1973, because of the County's failure to live up to the terms of the agreement, HUD terminated the contract. Early in 1974, the County brought suit against HUD to recover the contract. As this report is written, the controversy is still in court.

Two fundamental issues underlie the dispute: the first concerns the adequacy of the County's planning process, and the second concerns the responsibility of the Federal Government to ensure that Federal funds are not used to maintain existing patterns of exclusion and discrimination.

The Advisory Committee, in issuing this report, feels that both issues are of extreme importance. Planning in the County will affect the future development of the entire region. This planning process will either help to provide housing and other services for low-income and minority citizens or reinforce present patterns of exclusion and segregation. The policy of the Federal Government is also crucial: Federal funds, likewise, will either harden existing patterns of exclusion or will act as an impetus to remove those patterns.

THE PROBLEM

Baltimore County, sometimes called the "Golden Horseshoe," virtually surrounds the city of Baltimore. The County spreads over 608 square miles and has more than a dozen urban areas. The city consists of 79 square miles of land. Despite the fact that it has seven times the land area, the County has almost 300,000 fewer residents, according to the 1970 census. There are approximately 1,000 residents per square mile in the County compared to 11,500 persons per square mile in the city.² The following table, drawn from the 1970 census of population, compares the white and black populations of the city and County:

	Baltimore City	Baltimore County
White	479,837	598,989
Black	420,210	19,597
Total	905,759	621,077
% Black	46.3	3.2

There has been tremendous growth in Baltimore County. The U.S. Commission on Civil Rights was told at its 1970 hearings that the County's population doubled between 1950 and 1964. The increase in the number of jobs in the

2. Hearing before the U.S. Commission on Civil Rights, Baltimore, Md., Aug. 17-19, 1970, p. 496 (hereafter cited as Baltimore Hearing).

County was even greater: 182 percent between 1948 and 1968. This growth has not included minority citizens. The Commission heard that during the time that the population in the County was doubling, both the number and percentage of black County residents declined. In 1950, blacks made up 6 percent of the County population; in 1964 only 3 percent of the County's population was black. ³

At the same time, the black population was growing in Baltimore City, leading to predictions that during the 1970's the city would become majority black. And job opportunities in the city were not growing as they were in the County. The increase in jobs in the city between 1948 and 1968 was only 11 percent.

Some of this was caused by the flight of business from the city to the County. Between 1955 and 1964, 65 city firms employing 4,000 people relocated in the County, while only 6 County firms with 248 employees moved into the city. Thus, the black population was growing in the city and job opportunities were growing in the suburbs. The Commission was told at its hearing, "in some predominantly black census tracts in the city . . . unemployment rates range as high as 27 percent."⁴

There are several reasons why County growth has excluded poor and black citizens. One of the factors is racism. The Commission hearings uncovered much evidence of racial discrimination in real estate transactions in Baltimore County. ⁵ In addition, a report of the County's anti-poverty agency noted in part: "The Baltimore County Community Action Agency realizes that all residents of Baltimore County are not racist, but racism remains a major problem in employment and housing." ⁶

3. Baltimore Hearing, p. 498.

4. Ibid., pp. 13-14.

5. Ibid., p. 130.

6. Baltimore County Community Action Agency, CAP-81: Sept. 1, 1971 to Aug. 31, 1972, p. 15.

Another exclusionary factor is economic discrimination. There is very little low-income housing available in the County. The study, "Changes in Characteristics of the Housing Supply in Five Market Areas--Baltimore County, 1960-1967," documents the severe low- and moderate-income housing needs of the County. ⁷

The difficulties of the poor in finding housing were underscored by Mary Cardillicchio, housing director of the Baltimore County Community Action Agency, who testified:

Last month we had 67 families come to us for assistance in trying to find housing. Four families were assisted, and they do not fit the poverty guidelines. The other 63 we were able to assist only in accompanying them to housing court, referring them to welfare or other agencies. We were unable to find housing for any of the families that meet the poverty guideline. . .⁸

The community action agency also documented some causes of the County's shortage of low-income housing and the resulting dependence of the poor on housing in the city:

Baltimore County has no housing authority, and no replacement housing for low-income residents is being planned, if their neighborhoods are being taken for commercial uses. The average cost of new housing is \$28,000 for a single family unit which is far beyond the means of low-income residents. A crisis in housing is building. Rents are becoming exorbitant in all areas and many low-income individuals are being forced to move into the central city.⁹

7. Morton Hoffman and Co., Changes in Characteristics of the Housing Supply in Five Market Areas, Baltimore County, 1960-1967, 1968, p. 7.

8. Baltimore Hearing, p. 52.

9. Baltimore County Community Action Agency, CAP-81: p. 16.

The community action agency also cited the physical isolation of low-income areas by industrial development and highways as a further aggravation of the problem. 10

In addition, public action in Baltimore County has resulted in displacement of the poor and the black from the County to the city. As Mrs. Cardillicchio told the Commission:

In a community in the southeastern section of the County, 22 homes were razed for the construction of a road, the Patapsco State Interchange. Those 22 families were all black, all had to move to the city. All of them had jobs in the County and had to give up their jobs. There was no compensation given because they were renters. 11

A severe obstacle for city residents who would like to work in the County is the lack of adequate transportation. Thus inner-city residents are unable to take advantage of increasing job opportunities in the County. 12 Exclusion from County housing may also mean exclusion from participation in the County's expanding economy.

County government has been non-responsive to the needs of its few poor and black residents. In a report to the Commission on Civil Rights in 1970, consultant Yale Rabin concluded: "Development-control activities in Baltimore County over the past 10 years have functioned to substantially reduce housing opportunities in the County for low-income, predominantly (but not exclusively) black households." 13 In the time since Mr. Rabin's study, little has changed in the County.

10. Ibid., p. 16.

11. Baltimore Hearing, pp. 64-65.

12. Ibid., p. 477.

13. Ibid., p. 701.

The County received a Federal grant to fund 250 units of "leased housing" for low-income families. However, the Baltimore County Community Action Agency estimates that there are currently almost 15,000 substandard housing units.¹⁴ This limited grant can hardly begin to meet the needs of the County.

Other measures have been undertaken since then due to pressure from the Department of Housing and Urban Development. However, these programs, which will be discussed later in this report, mask the general inaction and lack of real commitment for positive change.

This history of exclusion and inaction is part of the background of the dispute between Baltimore County and HUD.

14. Baltimore County Community Action Agency, CAP 81, p. 16.

PLANNING REQUIREMENTS

To implement the statutory planning requirements of the Housing and Urban Development Act of 1965¹⁵ and the Housing Act of 1961,¹⁶ HUD developed a set of Areawide Planning Requirements.¹⁷ The requirements detail what planning applicants must do to obtain water, sewer, and open space grants from HUD, including preparing an Overall Program Design (OPD), a document designed to relate the planning process to a wide variety of both existing and potential social, physical, and economic problems.

A key requirement is comprehensive planning. HUD describes comprehensive planning as a process that:

. . . involves human and natural resources, as well as economic, governmental, and physical concerns related to the development and well being of the APJ [Areawide Planning Jurisdiction]. Planning should be comprehensive in the sense that it encompasses

15. 42 USC §§ 3101, 3102 (1970), Housing and Urban Development Act of 1965, Title VII, Secs. 701, 702, as amended, P.L. 89-117, 79 Stat. 451, 489, 490 (Aug. 10, 1965).

16. 42 USC §§ 1500-1500C, (1970), Housing Act of 1961, as amended, Title VII, Sec. 703, P.L. 87-70, 75 Stat. 149, 183 (June 30, 1961).

17. U. S. Department of Housing and Urban Development, Circulars MPD 6415.1A, MPD 6415.2A, MPD 6415.3, (1970). (Hereafter cited as HUD Circulars).

elements for housing, employment, and other aspects necessary to address current and future problems of land use and development. Procedural matters should be so structured as to allow minority and low-income groups to significantly impact the decision-making process. Further, through comprehensive planning, programs should be effectuated to create areawide choices to house minority and low-income families. Additional programs should be structured as necessary to address problems of and interrelationships between educational facilities, employment centers, transportation, taxation, intergovernmental relations, etc., as they relate to housing and development. Basic components to be considered in the planning process are set forth below. ¹⁸

These standards recognize that water, sewer, and open space facilities affect many social and physical components of a community. Adequate planning for a broad range of community needs is a prerequisite of Federal aid for water, sewer, and open space facilities. ¹⁹

An important question is whether HUD's Areawide Planning Requirements apply to Baltimore County or to the areawide planning organization, the Baltimore Regional Planning Council. The area covered by the Council includes Baltimore City, Harford County, Carroll County, Howard County, and Anne Arundel County, as well as Baltimore County. HUD has not denied the primary responsibility of the Regional Planning Council, but stated in a letter to the County that "In large, complex metropolitan areas such as Baltimore, countywide comprehensive planning cannot be separated from comprehensive planning for the metropolitan area as a whole. Therefore, comprehensive planning at the County level should exist in such metropolitan areas." ²⁰

18. HUD Circular MPD 6415.1A, paragraph 12a (1970).

19. 24 C.F.R. §§§ 540.5(a), 541.4(a), 555.5(a)(2) (1974).

20. William J. Pelle, Jr., Regional Director of Planning, Department of Housing and Urban Development, to Frederick L. Dewberry, Baltimore County Development Coordinator, Apr. 5, 1971. On file with the U.S. Commission on Civil Rights.

This interpretation was based on a section of the Areawide Planning Requirements which calls for a "[d]escription of each major program area in which planning is to be undertaken by the APO [Areawide Planning Organization -- in this case the Regional Planning Council] and other planning organizations within the APO, and the relationship of such activities to the solution of problems or the attainment of goals." 21

In addition to the Areawide Planning Requirements, there are two Federal civil rights statutes affecting Federal grants to localities. The first is Title VI of the Civil Rights Act of 1964 which provides: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."²² The second is Title VIII of the Civil Rights Act of 1968 which establishes that "it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States."²³ The act goes on to provide: "The Secretary of Housing and Urban Development shall . . . administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter."²⁴

In a situation of racial polarization, such as exists between Baltimore City and Baltimore County, past exclusionary practices act in effect to deny the benefits of Federal aid to those who have been excluded. Blacks historically have been excluded from Baltimore County by a host of discriminatory practices as revealed at the

21. HUD circular, MPD 6415.1A, paragraph 13a.

22. P.L. 88-352, Title VI, 78 Stat, 252 (July 2, 1964), 42 U.S.C. § 2000d (1970).

23. P.L. 90-284, Title VIII, 82 Stat. 81 (April 11, 1968), 42 U.S.C. § 3601 (1970).

24. 42 U.S.C. § 3608(d)(5) (1970).

Commission's Baltimore hearing. Consequently, they are being denied the benefits of Federal developmental assistance given the County.

Regulations established by HUD to implement these civil rights statutes, of course, prohibit all forms of active discrimination in the administration of federally assisted programs.²⁵ Most importantly, the regulations now require that affirmative action be taken to correct the effects of prior discrimination or other conditions where prior discrimination or other conditions would tend to exclude blacks or other minorities.

Even in the absence of such prior discrimination, a recipient in administering a program should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this Part 1 applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act. ²⁶

25. 24 C.F.R. § 1.4(a) - 1.4(b)(5) (1974).

26. 24 C.F.R. § 1.4(b)(6)(ii) (1974). The quoted portions of the regulations were not in effect at the time the grant contracts at issue were entered into by HUD and Baltimore County. These particular provisions were published July 5, 1973 (38F.R. 17949), 10 months prior to termination of the contracts in May 1974. However, when the current regulations were adopted, including this affirmative action provision, they were made effective retroactively to apply to preexisting contracts. See, 24 C.F.R. § 1.5(b) (1974). In any event, HUD was already under an obligation to require affirmative action on the part of grant recipients under 42 U.S.C. § 3608(d)(5) (1970), quoted on p. 10, at the time the contracts were entered into.

Recipients of open space, water, and sewer grants are specifically required to give assurance that they will comply with these statutes and regulations.²⁷ Thus, in addition to all other planning requirements, HUD regulations require that Baltimore County, as a condition of receiving Federal aid, undertake "reasonable action" to overcome the consequences of prior discrimination and other conditions which have excluded blacks and other minorities.

The affirmative action mandate under Title VI is given even greater urgency because of HUD's policy against placing subsidized housing in central cities or other areas where minorities are concentrated.²⁸ With this policy, it becomes crucial for suburban counties to take affirmative action to correct the effects of past discriminatory exclusion.

It is important to recognize the interrelationship between planning requirements and the civil rights requirements of Federal law. The Areawide Planning Requirements call for comprehensive planning as a prerequisite for water, sewer, and open space programs. This planning process includes the recognition of the needs of the communities in the area and the formulation of strategies to address those needs. In metropolitan regions, HUD's regulations recognize the entire metropolitan area as the basic planning unit;²⁹ the separate jurisdictions within that region must plan with regard to the region's problems. This requires that communities recognize their inter-relationship with other communities in the metropolitan region.

The civil rights requirements call for affirmative action to be taken to remedy past exclusion and to further the ends of fair and open housing. These requirements fit well with the planning requisites; adequate planning would reveal discrimination and address it as a need requiring action.

27. See, 24 C.F.R. §§ 541.4(b), 555.8(a)(1) (1974).

28. See, 24 C.F.R. § 200.700 et seq.

29. The regulations state: The planning area jurisdiction for a metropolitan area should include the Standard Metropolitan Statistical Area (SMSA) plus any contiguous county or counties now urbanized or likely to become urbanized in the foreseeable future. 24 C.F.R. § 600.40(c)(1)(i) (1974).

In the case of Baltimore County, the planning and equal opportunity requirements would require the County to undertake comprehensive planning which would include planning for action to overcome the effects of exclusion. That planning process would also have to recognize the County's responsibility in helping to solve regionwide problems. Failure on the County's part could mandate denial of Federal funds for County water, sewer, and open space projects.

THE CONTROVERSY

The dispute between Baltimore County and HUD represents the convergence of the County's history of exclusion of minorities, the battery of Federal civil rights laws and planning regulations, and the County's desire for Federal aid in developing water, sewer, and open space facilities. The controversy is now more than 4 years old. It is an important case in the application of both planning and equal opportunity requirements to Federal aid policies.

In mid-1969, the County withdrew its application for funds under HUD's "701" Comprehensive Planning Assistance Program, a program which provides funds to planning agencies. According to HUD, the County withdrew its application rather than prepare the "housing element" which is required by the 1968 Housing and Urban Development Act.³⁰ In addition, the County declined to prepare the required Overall Program Design (OPD), a document that describes planning work currently being done on the problems.³¹

HUD felt the County's planning process was inadequate because it was not addressing "social issues" such as housing needs, citizen participation in the planning process, and the needs of low-income and minority citizens.³² HUD also felt that the statement of problems, goals, and work plan activities of the Baltimore County Office of Planning and Zoning were too general to be very useful.

30. P.L. 90-448, 82 Stat. 476 (Aug. 1, 1968); 40 USC 461 (1973).

31. Background provided by HUD Assistant Regional Administrator Kaplan to HUD Regional Administrator Robb, Dec. 10, 1971.

32. Ibid.

The Freeze Begins

On the day that the U. S. Commission on Civil Rights began its hearings in Baltimore County, a letter from HUD arrived at the Baltimore County Office of Planning and Zoning in which HUD expressed its reservations about the County's planning process. Simultaneously, HUD began the freeze on funding of the County's water, sewer, and open space projects.

The project at issue in this letter of August 14, 1970, was an open space proposal, the Eastern Area Park Project. HUD felt that there were unanswered questions about the accessibility of the park to the low-income people for whom the park had been largely intended. HUD had three basic reservations about the Eastern Area Park proposals. First, HUD wanted the County to identify the needs of the people for whom the park was intended, an essential element to plan the park properly. Secondly, HUD wanted to know how a "representative sample" of the affected citizens would be involved in the planning of the park. This point was a result of HUD's basic question about how the County's planning process allowed for and encouraged citizen participation. The third point on which HUD wanted information was whether the County had discussed with the Regional Planning Council any methods for providing access to the park for citizens without cars.

The three objections HUD raised to the Eastern Area Park Project questioned the process used to plan that particular project. The same letter went on to question the entire County planning process. HUD had been concerned about the County's planning process for over a year.

In early 1969, HUD became increasingly aware that Baltimore County had a major problem concerning the housing segregation of low-income and minority people. HUD also became convinced that the County was not addressing these problems in its planning process.³³ The August 14, 1970, letter from HUD to the County pointed out that "as you are

33. Ibid.

aware, we must make a determination as to the adequacy of the local planning process and specifically whether the process provides us with sufficient basis for making findings relating to project consistency [with other planning]."34

In assessing the County's planning process, HUD was unsure of what methods the County had used to analyze the community and its needs as well as the activities proposed to meet those needs. HUD wanted to know how the County determined its population characteristics. This was needed in order to determine the needs of the County's population. HUD also emphasized that the planning process must address the nonphysical aspects or "social components" of the County.

HUD defined seven criteria that would insure a County Guideplan that was "an effective guide to decision making."35 The seven criteria represent HUD's position on the role of planning in Baltimore County. The County undertook the preparation of an Overall Program Design.36

A Thaw in the Freeze

On February 12, 1971, HUD, while not totally satisfied with the County's action to improve access to the Eastern Area Park, nevertheless approved the project with the admonition that the County improve its future access planning. HUD also indicated that the County had made sufficient progress, according to its December 30 statement, to receive favorable reviews from HUD until June 30, 1971, when the County's Overall Program Design (OPD) was due. On June 30 and again on December 31, 1971, the County's planning would be reviewed for adequacy.

A significant issue stressed by HUD was that:

The OPD should include a housing component consisting of social-economic breakdown

34. HUD Assistant Regional Administrator for Program Coordination and Services Hawthorn to County Planning Director Gavrelis, Aug. 14, 1970.

35. Ibid. See Appendix A.

36. County Planning Director Gavrelis to HUD Assistant Regional Administrator Hawthorn, Dec. 30, 1970.

(i.e., income and minority breakdowns) and work activities designed to allow greater freedom of choice for all citizens -- especially low-income and minority group citizens -- in the location and type of housing throughout Baltimore County and to minimize existing disparities between where people live and where they work.³⁷

In the same communication, HUD also emphasized that the Overall Program Design must include an explanation of how citizens would participate in the planning activity.

The Freeze Continues

The County failed to submit its Overall Program Design by the June 30, 1971, deadline. This meant the funding freeze automatically was resumed.

The County finally submitted its OPD on October 7, 1971. HUD found the October proposal vague in its explanation of planning activities as well as the relation of those activities to County problems.³⁸ In response, the County submitted additional information on December 7.

The resubmittals were again unacceptable to HUD. In a letter to the County on December 22, HUD stated that the County's planning process should identify the problems and deal with them:

The Overall Program Design however fails, as in the past, to address the nature and dimensions of housing needs throughout the County . . . We are asking the County to modify its Overall Program Design to incorporate a work activity which will result in the preparation of a specific housing plan during the next year.³⁹

37. HUD Assistant Regional Administrator Hawthorn to County Planning Director Gavrelis, Oct. 29, 1971.

38. HUD Area Director Clapp to County Planning Director Gavrelis, Oct. 29, 1971.

39. HUD Area Director Clapp to County Planning Director Gavrelis, Dec. 22, 1971.

HUD explained that the housing plan must set forth County housing needs in some depth. It should also recommend policies and actions by the County to meet these needs, including strategies for implementation and specific steps to meet the housing needs and the related public service needs of low-income and minority residents.

HUD also requested that the County undertake an educational program to eradicate what was described in the County's OPD as an "atmosphere of fear and bias" toward open housing. While the OPD had identified this as a problem, it had not defined any work activity to deal with the problem.⁴⁰

Soon after HUD's letter, the County submitted its proposal for the development of a housing plan. The housing plan, according to this submission, was to be written by the Interagency Planning Group composed of the heads of at least nine of the County's Departments.⁴¹

On January 10, 1972, HUD established a June 30, 1973, deadline for completion of the housing plan; the County was given 18 months to prepare the plan. HUD allowed this much time because it accepted the County's claim that it had to gather a great deal of data. After this deadline had been set, HUD personnel learned that the County already had access to much of the necessary data.⁴² However, HUD did not press the issue and let the 18-month deadline remain.

The funding freeze could not yet be lifted. Even though HUD had approved the County's proposal for drafting a housing plan, the civil rights requirements still had to be met.

HUD and the County had earlier agreed that an educational program would meet the concerns about "the County's own admission of an atmosphere of fear and bias which prevents full attainment of open housing in the County."⁴³ A draft of this proposal, dated February 7, was received by HUD on February 22, 1972. The plan had three purposes:

40. Ibid.

41. Meeting between HUD Area Director Clapp and County Planning Director Gavrelis, Jan. 6, 1972.

42. HUD inter-office memorandum, Jan. 25, 1972.

43. HUD Regional Administrator Robb to HUD Under Secretary VanDusen, Mar. 7, 1972.

1. To inform citizens of Federal civil rights legislation affecting housing.
2. To improve intergroup relations within Baltimore County.
3. To inform citizens of the housing needs of the County.

However, the basic design of the program was deficient in several respects. For example, it did not specify the amount of funding necessary for its execution. (Without specifying the funding level, it is impossible to judge the scope of the program.) The plan also omitted any measures for evaluating the impact of the program and assessing its effectiveness. The plan relied heavily on the resources of other public and private agencies without giving any indication of the willingness and capability of these agencies to contribute to the program.

The plan also failed to achieve the basic purposes listed previously. The first part of the program -- to inform citizens of the Federal open housing law -- was extremely vague. It depended, in part, on donated public service time from local radio and television stations to disseminate information, but failed to specify the minimum amount of donated time necessary for the program to be effective. In addition, the plans failed to specify if the local media had agreed to donate the time.

The first section of the plan indicated that a staff member of the school system would assist, but the plan did not mention whether the Board of Education had agreed to cooperate. The large degree of cooperation necessary from outside groups provided a ready excuse for failure. The Community Relations Commission should have indicated what commitments had already been made by those groups.

The second section, the Program to Improve Intergroup Relations was aimed at overcoming the problems of fear and bias. The program sought to improve "intergroup relations" within individual neighborhoods, but there were few neighborhoods that had minority residents. The report of the Baltimore County Community Action Agency, drawn upon extensively by the County in its Overall Program Design,

stated that there was very little social integration in the Baltimore area, and the small percentage of black families in the County were concentrated in small enclaves. For this reason, improving "intergroup relations" within neighborhoods had very limited relevance to overcoming the general sense of fear and bias in the County.

HUD found the proposal unacceptable. In a letter dated March 9, 1972, HUD pointed out that the County proposal did not deal with the problems mentioned in the Overall Program Design; the scope of the proposal met the barest minimum of Federal law, totally ignoring findings of the U. S. Commission on Civil Rights, and the activities of the U. S. Department of Justice in the area; the program failed to define the role of the Community Relations Commission in the Interagency Group (which had been named to prepare the housing plan); it ignored possible assistance from the Maryland Human Relations Commission or the Maryland attorney general's office; there was no project accountability; and the plan relied extensively on participation of agencies outside County government in carrying out the proposed activities.⁴⁴

The County responded to HUD's criticism swiftly. Dale Anderson, then county executive, attacked HUD for a "lack of good faith" and the "harassment of Baltimore County."⁴⁵ He said that since the County had submitted the required documents to HUD, the grants should be approved despite problems with "details."

HUD explained to the county executive that the educational plan was understood to be a draft proposal for HUD comment, and that their objections could be met by the County:

The comments contained in our letter of March 9 were discussed in detail with Mr. Stanton [Chairman of the Community Relations Commission] and Mr. Gallen [Executive Director of the Community

44. HUD Area Director Clapp to County Community Relations Commission Chairman Stanton, Mar. 9, 1972.

45. County Executive Anderson to HUD Area Director Clapp, Mar. 13, 1972.

Relations Commission] and it was our impression that the questions raised were clearly understood and could be addressed.⁴⁶

The Baltimore County Community Relations Commission had made it quite clear that it would be willing to reformulate its plan if HUD so requested; Mr. Stanton, in a letter to Executive Director of Baltimore Neighborhoods, Inc. George Laurent, stated:

If HUD asks Baltimore County to submit another 'Housing Education Program' and should the County refer this request to the CRC, we are ready, willing, and I might add, able to prepare a program which will meet what we feel are the housing educational needs of county citizens.⁴⁷

However, in its reply to HUD two months later, the Baltimore County Community Relations Commission, which had earlier expressed its willingness to change the program if HUD found it lacking, defended the original submission.⁴⁸ The commission chairman had previously characterized the report as a "tentative outline."⁴⁹

The Freeze Begins to Melt

On May 12, 1972, the day after the Community Relations Commission letter to HUD, the county executive wrote HUD:

46. HUD Area Director Clapp to County Executive Anderson, Mar. 24, 1972.

47. County Community Relations Commission Chairman Stanton to Baltimore Neighborhoods, Inc. Executive Director Laurent, Mar. 22, 1972.

48. County Community Relations Commission Chairman Stanton to HUD Area Director Clapp, May 11, 1972.

49. County Community Relations Commission Chairman Stanton to Baltimore Neighborhoods Inc. Executive Director Laurent, Mar. 22, 1972.

This administration is committed to an education program and likewise committed to housing planning as previously presented as part of Baltimore County's OPD. Therefore, we again request approval of all these documents, immediate lifting of the funding freeze and immediate approval of sewer and water grant WS-MD-72.50

HUD's response to this letter was startling; it lifted the freeze on funding the Baltimore County projects. In his letter to County Executive Dale Anderson, HUD Baltimore Area Office Director Allen Clapp explained:

The commitment of the County Administration, as indicated in your letter, to the execution of the education program and the carrying forth of the County planning process as expressed in the Overall Program Design will, we trust, assure that the intent of these activities will be achieved. As I am sure you are aware, your personal commitment has done much to overcome some of the reservations which we have with regard to the County's position on the content of the proposed plans and programs and the timing of the County efforts to meet its equal opportunity and housing problems.⁵¹

Thus, the freeze on HUD funding of Baltimore County projects was lifted, because of the "commitment" of the county executive, not because of the content of the proposals. The actual commitment of the County was not as great as HUD assumed; after the lifting of the freeze, County Executive Anderson indicated that the County's only commitment was found in the previous submissions.⁵²

50. County Executive Anderson to HUD Area Director Clapp, May 12, 1972.

51. HUD Area Director Clapp to County Executive Anderson, May 22, 1972.

52. Baltimore Sun, May 21, 1972, p. C22.

HUD's lifting of the freeze contradicted its previous emphasis on the substance of the County's program in favor of the alleged intentions of the county executive. Lifting of the freeze also seemed to have surprised HUD's own staff. The planning review necessary for approval of the County's application was not completed until 2 days after the application was approved, and it did not support the approval of the County's application. The planning review concluded: "Insufficient progress has been made in the County planning process to allow us to make favorable reviews for community development having planning requirements."⁵³ Clearly, the lifting of the freeze came before HUD was convinced of the adequacy of the County's efforts.

Monitoring Contract Conditions

In his letter lifting the freeze, HUD's Baltimore Area Office Director had mentioned that procedures for "progress reporting and monitoring" of the county's efforts would be established.⁵⁴ HUD intended to insure that Baltimore County carried through its commitments. The monitoring of the County's efforts ultimately led to further conflict between HUD and the County. In separate letters to the County Community Relations Commission,⁵⁵ May 22, 1972, and the County Office of Planning and Zoning,⁵⁶ May 27, 1972, HUD requested bi-monthly progress reports on the Education Plan and the Housing Plan, beginning in June 1972.

Lifting the freeze did not mean that the County automatically would receive the water and sewer funds it had requested. Under the Water and Sewer Facilities Grant Program, HUD executes a grant contract with the applicant governing the use of the grant, the conditions under which

53. HUD inter-office memorandum, May 24, 1972.

54. HUD Area Director Clapp to County Executive Anderson, May 22, 1972.

55. HUD Area Director Clapp to County Community Relations Commission Chairman Stanton, May 22, 1972.

56. HUD Area Director Clapp to County Planning Commission Chairman Heyman, May 27, 1972.

the contract is given, and the conditions under which the grant funds are disbursed. Baltimore County was advised in the June 2, 1972, letter from HUD that the grant contract for WS-MD-72 would include special conditions providing that the County must meet the commitments to which it had already agreed. Failure to meet the conditions would terminate the contract.⁵⁷

The County and HUD disagreed over the contract conditions that HUD proposed in its June 2 letter. The county solicitor contested the proposed contract conditions that HUD proposed in its June 2 letter. The county solicitor contested the proposed contract conditions on the grounds that they were too vague and that the County would have no appeal from any HUD decision to cancel the contract.⁵⁸ HUD replied a month later, claiming that its requirements were not vague since they were based on the County's own programs. HUD also said that the County could go to court if it felt HUD behaved incorrectly after the contract was signed.⁵⁹

A month later, in another surprising retreat, HUD "recast" its earlier contract conditions. The new special conditions gave the County more latitude in negotiating with HUD over the adequacy of the County efforts:

The County Planning Commission has prepared and adopted a realistic Housing Plan in accordance with the Planning Commission's work program and time schedule for completion submitted to and accepted by the Government, and that the Grantee's County Council and Administration have taken action to implement

57. HUD Area Director Clapp to County Administrative Officer Fornoff, June 2, 1972.

58. County Solicitor Alderson to HUD Area Director Clapp, June 14, 1972.

59. HUD Area Director Clapp to County Solicitor Alderman, July 17, 1972, See Appendix C.

the adopted plan, or other appropriate alternatives to the adopted plan for meeting identified housing needs as the Grantee and the Government may agree.

The Grantee has taken reasonable measures to fulfill the activities as contained in the Baltimore County Overall Program Design as adopted by the Planning Commission and the Education Plan as adopted by the Community Relations Commission, which measures shall include agreement with the Government on a practical procedure to monitor the execution of said program design and plan.⁶⁰

The new contract conditions were accepted by the County and on October 4, 1972, Baltimore County and HUD signed the grant contract including the special conditions. After the contract was signed, HUD action was critical. If HUD relaxed its monitoring of County activities, the County would receive the Federal development assistance without meeting the requirements.

The County was also to submit to HUD within 60 days of signing the contract, information on the impact of the water and sewer project on minority group members explaining where existing services were incomplete, where future services would be located, and where minority populations were located. This contract condition was intended to insure compliance with Title VI of the Civil Rights Act of 1964⁶¹ which requires that the benefits of facilities constructed with Federal aid not be denied to minorities. It is a standard requirement in the water and sewer program.

The County was therefore obliged to submit information on the impact of the water and sewer projects on the minority population within 60 days, and to submit bi-monthly reports concerning progress on the education program and the housing plan. However, 2 months later, the County had not submitted any of the required information. HUD gave the

60. HUD Acting Area Director Hobbs to County Administrative Officer Fornoff, Aug. 18, 1972.

61. 42 U.S.C. § 2000d (1970).

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60. HUD Acting Area Director Hobbs to County Administrative Officer Fornoff, Aug. 18, 1972.

61. 42 U.S.C. § 2000d (1970).

County until December 29, 1972, to submit the desired information.⁶² On December 28, the County responded but without the progress reports and all the materials requested. Three weeks later the July and November 1972 education plan reports were submitted to HUD, but the housing plan reports were missing.

HUD wrote the County on March 21, 1973, that the information on the impact of the water and sewer project on minority population in the County was not yet complete, and that the progress reports for both the education plan and the housing plan had been submitted late and were deficient. The education plan reports had contained no mention of implementation of the education program. In the case of the housing plan, HUD had requested a formal presentation of progress because of deficient reports, but the County had not complied.⁶³

HUD then ordered the County to refrain from incurring any further costs for WS-MD-72 (the water and sewer project) and the various open space projects approved since June 1972. HUD also returned two requisitions for funds for other open space projects. HUD had acted to insure that the County lived up to the conditions of the grant contract.

On June 28, 1973, Baltimore County submitted new information to HUD. This included the finished Housing Plan for Baltimore County, new information on the Education Program, and information on the impact of water-sewer service on the minority population.

Baltimore County's Overall Program Design had identified the shortage of housing for low- and moderate-income families, but proposed nothing to deal with this. HUD, therefore, required the County to undertake meaningful housing planning as a prerequisite for the water, sewer, and open space funds.

62. HUD Area Director Clapp to County Development Coordinator Dewberry, Mar. 21, 1973.

63. Ibid.

The County was specifically asked to do the following:

. . . set forth County housing needs in some depth and . . . recommend policies and actions by the County to meet these needs. The plan must define strategies for implementation and specific steps by which housing needs, and the requirements for related public service and facilities, particularly for low-income and minority residents, can be met through responsive governmental programs and private actions.⁶⁴

The County's submission, a year and a half later, was a massive report of 388 pages. However, it was not a housing plan; it did not meet the HUD criteria. It did not propose how the County could ensure the availability of adequate housing for all income groups. It attempted to explain why there was no need for any further County action. The Housing Committee of the Baltimore County League of Women Voters called it "a housing study" but not a "formal plan." The plan did not recommend policies and strategies for meeting the needs of the County. It was a defense of the present situation and sidestepped the need for County action.

The plan pretended that the problem of discrimination faced by minority group members was not a problem:

Most individuals find themselves, in a relative sense, discriminated against for one reason or another. Obviously, certain 'groups' have suffered more and longer than others, but most people can consciously relate in a relative sense to minority circumstances.⁶⁵

The County's approach to the problems suffered by the poor was equally cavalier:

To those who aspire to alternative residential environments, economic mobility represents a clear-cut course

64. HUD Area Director Clapp to County Planning Director Gavrelis, Dec. 22, 1971.

65. Baltimore County, "The Housing Plan/Evaluation Manual, 72/73 Product," p. IV-2.

for individual action if one is to match one's aspirations with the capacity to fulfill them. It seems rather, the emphasis should be on access to jobs, services, and facilities.⁶⁶

The County claimed that present programs of private development and Federal programs at 1970-71 levels can "adequately accommodate households of all income groups seeking housing within Baltimore County."⁶⁷ While the County Plan contained a great deal of data, the data does not directly support this view. The plan intimates that the private sector is capable of producing housing for middle- and low-income groups without Federal assistance, but fails to provide any analysis of the potential for this involvement, or its feasibility.

HUD found the Housing Plan inadequate. While impressively long, it lacked the key elements necessary. HUD explained to the County:

The plan as submitted does not address itself to or document unmet housing needs of Baltimore County either in the short run or over the longer period. No meaningful consideration of special problems of low-income and minority persons is presented. . .

In summary, the proposed Housing Plan is a collection of questionable, unsubstantiated statistics and subjective findings presented in a very general way. The document lacks any specific policy recommendations related to housing in the County.

In addition, no evidence has been submitted that the County Council and Administration have taken action to adopt and implement the Housing Plan as required by the contract conditions.⁶⁸

66. Ibid., p. VI-5.

67. Ibid., p. VI-3.

68. HUD Area Director Clapp to County Executive Anderson, Sept. 21, 1973.

HUD at the same time also criticized the lack of progress on the Educational Plan:

A review of the progress reports submitted to date reveals that actions taken by the Community Relations Commission to date fall far short of acceptable implementation measures necessary to adequately effectuate the Educational Plan.

As a result of these negative reviews, HUD said the County had failed to meet the contract conditions. HUD informed the County that it had an additional 60 days to meet those conditions.⁶⁹

The County instead of altering the proposals, merely defended them,⁷⁰ insisting that the contract conditions had been met. Meetings took place between HUD staff and County officials but little progress was made.

The Contract is Terminated

On November 20, 1973, HUD notified the County that it had failed to meet the special contract conditions during the 60-day extension. As a result, HUD would begin the process of terminating the contract with Baltimore County.⁷¹ The HUD Area Office requested the HUD Regional Office on November 30 to formally terminate the grants, and on January 24 the HUD Regional Administrator requested authorization from HUD's Assistant Secretary for Community Planning and Development to terminate them.

The week prior, on January 18, 1974, the County went to court to enjoin the Federal Government from terminating the grants. In a May 8, 1974, letter to Frederick Dewberry, then county executive, HUD Area Director Clapp notified the County of the termination of the contracts as authorized by the Assistant Secretary of Community Planning and Development.

69. Ibid.

70. County Development Coordinator Dewberry to HUD Area Director Clapp, Oct. 26, 1973.

71. HUD Area Director Clapp to County Executive Anderson, Nov. 20, 1973.

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As of this writing, the County and HUD are in court, the County having petitioned to gain the water, sewer, and open space funds at issue.

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CITIZEN PARTICIPATION

In this controversy the people appear to have been forgotten. The County refused to enlarge the planning process to provide for realistic citizen participation. HUD failed to press the County to open up its planning process and accepted a pretense at participation.

Baltimore County

HUD notified the County in August 1970 that the planning process must incorporate procedures "which afford all County residents, and especially low-income and minority groups" the opportunity to participate in preparation, implementation and revision of the plans.⁷²

How well the County took this admonition to heart can be seen in the education and housing plans. Neither made provision for citizen participation at the preparation level. The Educational Plan was prepared out of the public's view and presented to HUD after it had been adopted at a closed meeting of the County Human Relations Commission.

Community groups with extensive experience in the area were not consulted. Citing a pressing deadline, the County Human Relations Commission submitted a program to HUD without consulting any community groups. When HUD rejected the plan the Human Relations Commission merely resubmitted it, and again, community groups had no input.

72. HUD Assistant Regional Administrator Hawthorn to County Planning and Zoning Director Gavrelis, Aug. 14, 1970.

The County's original approach to housing planning also lacked provision for citizen participation. When HUD required that the County's Overall Program Design include provisions that would result in a housing plan, the County created an Interagency Planning Group to do the housing planning.

The Interagency Planning Group was expected to coordinate the activities of the County with other public and private agencies, including the Regional Planning Council and the State Department of Economic and Community Development, but they were the only other groups outside County government represented. Again community groups were absent.

The final County Housing Plan also showed scant attention to citizen participation. A section entitled "Community Perspectives" ⁷³ contained less than two pages of comments from citizens who are not connected with governmental organizations. Nor was there any indication that the County had an ongoing process to involve citizens in planning.

It is not that citizen interest does not exist; both the Baltimore County League of Women Voters and the Fair Housing Councils of Metropolitan Baltimore examined and commented on the plan.⁷⁴ Not to include citizen participation in the planning process is to isolate citizens from their own future. Furthermore, planning that is imposed cannot bring the same degree of cooperation from the community as planning done in conjunction with the community. Both the Educational Plan and the approach to housing planning failed to meet the basic HUD criteria for citizens participation; yet HUD approved them both.

73. Baltimore County, "The Housing Plan/Evaluation Manual," Baltimore County, Maryland, section V.

74. Housing Committee, Baltimore County League of Women Voters, "The Future of Residential Opportunities in Baltimore County," October 1973.

The Fair Housing Councils of Metropolitan Baltimore, "Specific Comments on County Housing Plan/Evaluation Manual," May 24, 1974.

During the controversy, HUD was in the process of "decentralizing," and the HUD Baltimore Area Office was formed during this period as part of the process. However, decentralization did not result in making the agency more responsive to local concerns, and HUD's actions frequently seemed unclear.

In the fall of 1971, for example, HUD appeared to reverse itself continually. HUD would announce that the County was not going to receive the funds, and would then issue a statement that release of the funds was imminent. From the extensive correspondence between HUD and Baltimore County it could be seen that HUD had a sound and legal position for demanding certain actions on the part of the County. Unfortunately HUD never informed the community of the rationale for its actions. Any possibility for citizen support was negated by the public's confusion on HUD's position.

SUMMARY

The controversy between the U. S. Department of Housing and Urban Development and Baltimore County over the grants for water, sewer, and open space funds has involved a history of proposals, evaluations, clarifications, modifications, agreements, and disagreements. The Maryland Advisory Committee to the U. S. Commission on Civil Rights has observed that, throughout the controversy, Baltimore County has failed to comply with Federal planning and equal opportunity requirements and HUD has been inconsistent in its demands of Baltimore County.

The following is a brief chronological review of the dispute with observations by the Advisory Committee:

In MID-1969, Baltimore County, having made application for funds under HUD's "701" Comprehensive Planning Assistance Program, withdrew its application.

HUD attributed the County's withdrawal to its unwillingness to come to grips with social issues in planning.

The Advisory Committee is in complete agreement with this assessment.

A year later, on AUGUST 14, 1970, an open space grant involving the Eastern Area Park project was frozen because of HUD's concern with the adequacy of the local planning process. In order to get the freeze lifted, the County notified HUD on DECEMBER 30, 1970, that it was preparing an Overall Program Design (OPD) to conform to the Federal Government's requirements. However the draft would not be completed before mid-April 1971 for submission to HUD.

The Advisory Committee views this as the beginning of a series of unkept promises.

HUD, on the strength of this promise, lifted the freeze on FEBRUARY 12, 1971, and approved the Eastern Area Park project even though key questions had not been resolved. The OPD was to be submitted on JUNE 30, 1971. When the County failed to submit the OPD on that date, HUD reinstituted the funding freeze.

On OCTOBER 8, 1971, Baltimore County submitted the 3-months overdue OPD to HUD, but HUD found it unclear and requested further information. Two months later, on DECEMBER 7, 1971, Baltimore County resubmitted a revised and somewhat more responsive OPD, but this, too, was found unacceptable to HUD. The County was given until January 12, 1972, to develop a response, including a housing plan and a fair housing education program for the citizens of Baltimore County.

Addenda to the OPD draft and a "plan" for a housing plan were submitted to HUD on JANUARY 6, 1972. HUD gave the County an additional 18 months -- until June 30, 1973 -- to develop its housing plan.

The Advisory Committee believes that HUD erred in accepting a clearly inadequate approach to housing planning and in giving the County an overly-generous deadline.

On FEBRUARY 7, 1972, the County's Community Relations Commission submitted its education program which HUD subsequently found unacceptable.

The Advisory Committee notes that the program was due January 12.

On FEBRUARY 17, 1972, the Maryland Advisory Committee met with the HUD area office staff to discuss its concern about compliance by the County, and on March 9, 1972, the chairman of the Advisory Committee's Housing Task Force, Rev. David MacPherson, explained the Committee's concerns in detail. (See Appendix D.) The Advisory Committee criticized the County's submissions as a cover for inaction.

On MARCH 9, 1972, HUD notified the Community Relations Commission that its education program was unacceptable. Within the week, Baltimore County Executive Dale Anderson denounced HUD's demands as unreasonable and demanded approval of the County's OPD and release of funds. HUD replied that when its questions were answered satisfactorily, its prerequisites would be met.

Two months later, on MAY 11, 1972, the Community Relations Commission responded by defending its original submission.

This was further indication to the Advisory Committee that the County was unwilling to deal realistically with the pressing need for a program of racial awareness.

On the following day, MAY 12, 1972, County Executive Anderson stated to HUD that his administration was committed to an education program and a housing plan and asked that the freeze be lifted. Ten days later, on MAY 22, 1972, HUD lifted the freeze, explaining that the county executive's commitment opened the way for final action.

The Advisory Committee found this astounding since nothing had changed. However, a crucial provision was HUD's requirement that the County submit bi-monthly progress reports on the housing and education plans.

On JUNE 2, 1972, HUD approved the \$1,440,200 grant, WS-MD-72. However, the County claimed that the equal opportunity and planning conditions of the contract were too vague. On AUGUST 18, 1972, HUD "recast" the conditions. The Advisory Committee saw this as still further unwarranted concessions to the County.

The contract with the revised special conditions was signed on OCTOBER 4, 1972. However, the County failed to submit the bi-monthly progress reports or the equal opportunity information, due DECEMBER 2, 1972. Its submissions on December 28, 1972, and January 16, 1973, were incomplete, and finally, on APRIL 26, 1973, HUD insisted that complete, responsive reports be submitted and a realistic housing plan be prepared and adopted by June 30, 1973, as agreed 18 months earlier.

The Advisory Committee had submitted a draft of its study to HUD's Baltimore area office on March 1, 1973, and on April 5, 1973, met with the staff to obtain their comments.

On JUNE 28, 1973, the County submitted its housing plan and a report on the education program. HUD was still not satisfied with the County's submissions, and after extending the deadline and meeting with County officials, HUD notified the County on NOVEMBER 20, 1973, that it had failed to meet the contract conditions and began terminating the contracts.

Baltimore County, on JANUARY 18, 1974, filed a petition in the Court of Claims seeking damages and attempting to compel the Federal Government to take steps to provide the grants. On MAY 8, 1974, the HUD area office officially notified Baltimore County that the contracts were to be terminated as of May 10, 1974.

On JULY 11, 1974, the parties agreed to suspend action for 90 days (to OCTOBER 12, 1974). The County and the Federal Government hoped to reach an accommodation during this period. The Advisory Committee felt strongly that the accommodations should mean that the County would comply with the planning and equal opportunity requirements of the original contract.

The County again found that it needed more time and an extension for an additional 30 days to NOVEMBER 11, 1974, has been agreed upon.

The Advisory Committee reiterated its concern that the contract conditions not be modified.

APPENDIX A

The following seven criteria for a County Guideplan are summarized from a letter from Samuel H. Hawthorn, HUD's Assistant Regional Administrator for Program Coordination and Services, to Baltimore County's Director of Planning and Zoning, George E. Gavrelis, August 14, 1970:

1. The plan must provide an analysis of County and County related problems to be addressed in the planning process and must establish a mechanism for ongoing evaluation of these problems. (HUD pointed out that the statement of problems in the Guideplan was too general to meet this criteria and also failed to look at regional problems that affect the County.)
2. It must present a statement of objectives, the methodology used to select those objectives and a priority system to achieve those objectives. (HUD felt that the statement of County goals was so general that it would be impossible to determine what the priorities of the goals would be during the planning process.)
3. The planning process must incorporate procedures which afford all County residents, and especially low-income and minority groups, the opportunity to actually participate in the preparation, implementation, and revision of the plans. (HUD questioned the County's efforts to include poor and minority groups in the planning process and the effectiveness of these efforts.)
4. The planning process must reflect at all stages the regional context within which it functions. (HUD asked the County to explain how its goals and objectives related to those of the region.)
5. It must provide a basis for establishing development controls. (HUD desired information on the status of the revised zoning and subdivision regulations, and whether the revised regulations would contribute to the alleviation of the problems mentioned in the Guideplan.)

6. The Guideplan must be legally adopted by appropriate government bodies.
7. The process must be clearly expressed as a continuous function of problem definition. (HUD suggested that "Baltimore County submit a work program covering three years which will indicate the planning activities to be undertaken and the fiscal and staff resources to be allocated to these activities.")

APPENDIX B

The following is excerpted from an attachment to a letter from Allen T. Clapp, HUD Area Director to William E. Fornoff, Baltimore County Administrative Officer, June 2, 1972:

- III. Please be advised that the Grant Agreement tendered for this project will contain the following Special Condition:

"The Government shall be under no obligation to disburse funds under the grant agreement unless:

- A. The Applicant's Planning Commission supplies no later than thirty (30) days after the execution of this grant agreement, evidence satisfactory to the Government that it has adopted the Guideplan for Baltimore County drafted by the County Office of Planning and Zoning in 1968, and which was agreed to be adopted on or before June 30, 1972.*
- B. The Government is satisfied by June 30, 1973, that the County Planning Commission has prepared and adopted a satisfactory "Housing Plan" in accordance with the agreed upon work program; and that subsequent to June 30, 1973, such plan has been recommended to the Governing Body of the Applicant for implementation; and that actions are being taken to implement the plan or other appropriate alternatives for meeting identified housing needs.
- C. The Government is satisfied that the Applicant has made satisfactory progress towards the fulfillment of the activities in accordance with the target dates contained in the Baltimore County Overall Program Design, including the housing inventory and plan. The procedure for monitoring these activities will be determined by the Government.
- D. The Government is satisfied that the Applicant has made satisfactory progress towards the fulfillment of the activity target dates as outlined in the Educational Plan adopted by the Community Relations Commission. The procedures for monitoring these activities will be determined by the Government.

The Government may, at its sole discretion, terminate this agreement if the applicant has not fulfilled both conditions (A) and (B) above. The Government may, at any time, terminate any further payments on account of the grant if it is not satisfied with the applicant's fulfillment of conditions (C) and (D) above."

*This Guideplan was adopted before the contract was signed and thus does not show up in later contract conditions.

APPENDIX C

The following is excerpted from a letter from Allen T. Clapp, HUD Area Director, to R. Bruce Alderman, Baltimore County Solicitor, July 17, 1972:

" . . . We are asking that the County Government and agents of County Government follow through on commitments previously made to HUD. The work program, including the aspects of the housing problems that this plan and program will address was prepared by the Planning Department and submitted to and approved by this department. The same must be said of the Overall Program Design. And, as you are aware, the scope of activities and objectives of the Education Program were previously submitted to HUD by the Community Relations Commission.

We trust that there is no vagueness about the definition of the work programs for these plans and programs. The County and its agencies drafted them. The County knows what is in them, the target dates for accomplishment and that HUD has found both of these satisfactory.

We are requiring only that these commitments which were obtained prior to project approval be completed as agreed. If HUD should, uncharacteristically, deny that the County met these targets or for some unsubstantiated reason declare that it is not satisfied with the County's planned progress, the County would have, of course an immediate judicial remedy."

APPENDIX D
UNITED STATES COMMISSION ON CIVIL RIGHTS

MID-ATLANTIC FIELD OFFICE
1405 Eye Street, NW
Washington, D. C. 20425
Telephone: (202) 382-2631

March 9, 1972

Mr. Allan Clapp, Area Director
Department of Housing & Urban Development
Mercantile Bank and Trust Building
201 E Street
Baltimore, Maryland 21202

Dear Mr. Clapp:

This is follow up to the February 17, 1972 meeting at your office attended by you and members of your staff, and by representatives of the State Committee and staff of the Commission, pertaining to compliance by Baltimore County with Federal planning and equal opportunity requirements administered by HUD. By letter dated February 23, 1972, I set out the basic problems which you indicated would have to be resolved prior to a finding that Baltimore County is eligible for water and sewer and open space grants.

In my letter, I also stated that, based on the information and documents you provided us, the State Committee had a number of serious problems and questions, and that I would set them out in a letter to you. That is the purpose of this communication.

The State Committee's basic concern is that, measured in terms of the problems to be solved, and the County's ability to act, the steps the County now has proposed seem little more than a cover for inaction.

As you stated in your letter of October 29, 1971, to Mr. Gavrelis, Director of Baltimore County's Office of Planning and Zoning, planning must be "an action-oriented activity", presenting a clear statement of "how the County has structured itself around a strategy for delivering products and impacts within a set of clearly defined objectives."

However, at our meeting of February 17, you gave us a document, produced by the Office of Planning and Zoning, of something less than 2-1/2 pages in length and bearing the caption "Housing Plan", which the County apparently offered in response to HUD's requirement for rational housing planning.

This document -- read in conjunction with the "Overall Program Design" to which it is appended -- lacks even the rudiments of a work program for a housing plan. It lacks such fundamental elements as a timetable for the production of work components, resource budgeting, and concrete description of work program elements. Moreover, the "Housing Plan" document stands alone, without conceptual or functional integration into the rest of the Overall Program Design.

In brief, this document is an ill-defined pledge on the part of the Office of Planning and Zoning to "recommend" that the County study housing problems, in order to develop some totally undefined "housing plan" by June 30, 1973.

Furthermore, the document fails to state the problems and objectives on which this "study" would be predicated.

No further study is needed to determine the existence of certain basic problems in Baltimore County, and the region, or to document the need for remedial action.

No further study is needed, for example, to determine that there is inadequate lower-income housing in Baltimore County to serve the needs of the County and the region. A number of studies document the problem. To name only a few: the Morton Hoffman study, "Changes in Characteristics of the Housing Supply in Five Housing Market Areas -- Baltimore County 1960-1967" (1968), documents the extent of substandard housing in the County; the Regional Planning Council has studied the problem, as reported in a number of publications (see, for example, "Low and Lower Middle Income Housing Production in the Baltimore Region") (1971); the League of Women Voters of Baltimore County published a study in April 1968. The Baltimore County Planning Board has recognized an "undeniable need" for additional low cost housing in the County, and the County Executive's own Housing Advisory Committee urged the creation of a County housing authority, in order to meet the "critical" housing situation. Analyses prepared by the Baltimore County Community Action Agency have recognized inadequate and substandard housing as a major County problem.

Further, at the hearings of the United States Commission on Civil Rights, held in Baltimore in August 1970, the Housing Director of the Baltimore County Community Action Agency, Mary Cardillicchio, testified that her agency was able to find housing for families requesting such assistance in only a small proportion of cases, and pointed out that six to ten

families a week applied for public housing in Baltimore City from the surrounding counties. In the course of background research preparatory to those hearings, Commission staff accumulated ample additional verification from newspaper files and other sources, that the housing problem in the County is a serious, widely recognized one.

Nor is further study needed to ascertain that growing racial polarization between Baltimore City and Baltimore County is a major problem. The Regional Planning Council has reported that the Baltimore region became more segregated from 1960 to 1970. The record of the August 1970 hearings of the Civil Rights Commission, including comprehensive demographic comparison of Baltimore City and Baltimore County, further documents this fact. The effect of County development and zoning patterns in forcing blacks from the County also was documented by the hearing. Further, while the "Section 235" subsidized housing program has been utilized by developers in Baltimore County, Commission staff investigation indicated that this was doing little, if anything, to remedy racial polarization between City and County. A variety of mechanisms of overt and systemic exclusion of blacks from the County were studied and documented. In addition, the Baltimore County Community Action Agency has concluded that "racism remains a major problem in employment and housing" in the County.

Nor, finally, is study needed to determine that these conditions are contrary to sound metropolitan development, and to national laws and policies. Thus, for example, in the "Urban Growth and New Community Development Act of 1970," Congress spelled out national urban growth policies with which these conditions are totally inconsistent. Moreover, in his housing statement of June 11, 1971, the President recognized that "equal housing opportunity" means "the achievement of a condition in which individuals...have a like range of housing choices available to them regardless of their race, color, religion or national origin," and that efforts to achieve this goal must "be aimed at correcting the effects of past discrimination".

As stated in HUD's letter of August 14, 1970, to the Baltimore County Office of Planning and Zoning, a basic requirement for adequate County planning is recognition by the County of problems which "reflect the regional situation as it impacts on the County as well as those problems that can be said to be confined within County boundaries." The County's 2-1/2 page "Housing Plan" element, and the proposed "Overall Program Design," fail to meet this basic requirement.

Not only has the County thus failed to acknowledge and define relevant problems, it has made no commitment to do anything about them. Indeed, the Overall Program Design itself acknowledges that it is merely provisional, since the Office of Planning and Zoning cannot prepare a final Design until the County Council, through adoption of the budget, determines what manpower and funds are to be made available. As you have made clear to the County, effective planning is an action-oriented activity "initiated at the chief executive or policy body level." The documents submitted by the County represent no such commitment.

These shortcomings are greatly aggravated by the history in which they are set. Not only has the Planning Board in the past vainly gone on record with respect to the urgent housing needs of the County, but the County Executive repeatedly has voiced his opposition to the kinds of actions which would be necessary to make County planning more than a dead-end. County Executive Anderson has declared that he is "not interested in Federal programs which impose Federal rules on Baltimore County," has characterized housing subsidies as a "giant giveaway program" to which he is opposed, and reacted to news of the Planning Board's endorsement of the submitted Overall Program Design with an expression of disbelief that Board members approving the Design could have read it or known what they are doing.

In consequence of views and policies such as these, the County systematically has exploited Federal assistance to further its own development ends, while rejecting all those forms of assistance which would have resulted in a proportionate sharing by the County in its own social and economic problems and those of the region.

It is true that the County applied for 500 units of federally assisted leased housing. But, numerically insignificant, this can have no effect unless made part of an effective, continuing, program.

Before suggesting in somewhat more detail some of the program commitments the County can make -- without any further "study" of the problem -- a few words should be said about the basis for requiring such commitments.

The sound planning requirements which are applicable to water and sewer and open space grants, can be administered fairly and effectively only if planning is prevented from becoming a cover for inaction. Good and sound planning requires discrimination between that which can be done now and that which requires preparatory study; unwarranted postponement of action is an unacceptable perversion of the planning process.

Accordingly, as an essential predicate for bona fide planning, those of the remedial steps which the County can now take -- some of which are suggested below -- must be identified.

This is particularly warranted in the present circumstances, where whatever genuine housing planning needs now are faced by the County, are in significant part of the County's own making. They are due to its refusal, of four years standing, to accept Federal planning funds and the principle of sound and open development which accompanies them.

The sound and open development which effective planning seeks, necessarily includes the goal of equal opportunity for all. However, Title VI of the Civil Rights Act of 1964, and Title VIII of the Civil Rights Act of 1968, spell out "equal opportunity" requirements of a more specific kind.

Title VI states that the benefits of Federal financial assistance may not be discriminatorily denied to any person. Title VIII directs all Federal agencies, including HUD, to administer their programs so as to further the ends of fair and open housing.

The role of Title VI in a situation of racial polarization such as that which exists between Baltimore City and Baltimore County, is not always clearly understood. It often erroneously is believed that Title VI applies only to the extent one can demonstrate that the persons administering the program of assistance are responsible for discriminatory exclusion from the enjoyment of benefits. While, as the Commission hearings documented, the County government shares responsibility for the removal and exclusion of blacks from the County, in fact it matters not by whom, when, or how the discriminatory exclusion was performed; it is enough that the benefits of Federal funds are denied -- by reason of racial discrimination -- to intended beneficiaries of the assistance.

Clearly, this is the situation in Baltimore County. As a matter of reason, as well as of express statutory provision, the "intended beneficiaries" of water and sewer, open space, and other metropolitan development assistance programs, comprise all the citizens of the metropolitan area. Undeniably, blacks historically have been excluded from Baltimore County by a host of overt and systemic discriminatory practices and traditions. Having been discriminatorily excluded from the County, this class of individuals now is discriminatorily denied the benefits of Federal developmental assistance given the County.

What, then, is the impact of Title VI upon Federal financial assistance for metropolitan development in Baltimore County?

The denial or termination of funds is an appropriate sanction in some cases with respect to violation of Title VI. However, particularly where the achievement of equal opportunity requires undoing an existing condition -- such as racial polarization between Baltimore City and Baltimore County -- the appropriate remedial mechanism for the enforcement of Title VI also may be a requirement of affirmative action. In the present context, "affirmative action" means positive steps and commitments by Baltimore County, to correct residence patterns reflecting the accumulated effect of years of overt and systemic discriminatory exclusion.

This affirmative action concept is set out in regulations implementing Title VI which have been proposed by HUD:

Where previous discriminatory practice or usage tends, on the ground of race, color or national origin, to...deny [individuals] the benefits of...any program or activity to which this Part 1 applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act. (Section 1.4(b)6).

This affirmative action mandate under Title VI is given even greater urgency and weight by virtue of the new HUD policy against placing housing in central cities, or other areas, where minorities are concentrated. Clearly, this policy makes it all the more imperative that affirmative action be taken by suburban jurisdictions in order to correct the effects of past discriminatory exclusion.

It is clear, therefore, that affirmative action to reverse the consequences of past discrimination is integral to the development programs administered by HUD.

Having discussed already the County's proposed performance under the "planning" component of such affirmative action, I turn now to the other affirmative action steps the County reasonably can take.

One of these affirmative action steps -- which you required of the County in your December 22, 1971, letter to Mr. Gavrelis -- is an educational program by the County, tied to its overall housing efforts.

The County's proposal for an "educational program," a copy of which you furnished us, closely parallels the "Housing Plan" element, assessed above, in terms of the nature and extent of its weaknesses. It, too, seems little more than a cover for inaction.

Your letter to Mr. Gavrelis stated that the educational program is to "inform citizens of...housing needs" and "to eradicate the atmosphere of fear of and bias towards Open Housing." Such a program is essential if real progress toward open and lower-income housing is to be made. The present unfavorable climate toward open and lower-income housing otherwise will remain an insuperable obstacle.

A sound program proposal should include good basic design, adequate specificity, and mechanisms for community involvement. The submitted County proposal fails even to approach these criteria.

With respect to basic program design, the County's proposal ignores the central problem of combatting fear and bias. Also, the program -- incredibly -- would postpone the education of County citizens concerning housing needs until "these needs become more clearly known".

One section of the proposal, the "Program to Improve Intergroup Relations," might seem to have some relation to overcoming the problem of fear and bias. Under this section, the program would seek to improve "intergroup relations" within individual neighborhoods. But this would be clearly responsive to the need to combat fear and bias only if the poor or black were distributed throughout many neighborhoods in the County. But such is not the case. The report of the Baltimore County Community Action Agency, drawn upon extensively by the County in its Overall Program Design, stated that "there is very little social integration in the Baltimore area," and that even "the small percentage of black families in the County are concentrated in small enclaves."

For this reason, improving "intergroup relations" within neighborhoods has very limited relevance to overcoming the sense of fear and bias in the County generally.

The proposal lacks any reasonable degree of specificity. No levels of funding or staffing are projected, and no County commitment to funding in any amount is reflected.

Another fundamental omission is criteria for evaluating the impact of the program. Without impact criteria, it is impossible to judge the effectiveness of the program once it has begun. This deficiency could lead the County to continue unchanged a program that was having little effect.

The mechanisms for community involvement are also wholly inadequate. It is symptomatic that, up to this point, the community has been denied a role in formulation of the program. Both Baltimore Neighborhoods, Inc., and the Fair Housing Councils, sought to participate in formulation of the education plan. Both groups, which have extensive experience in education programs,

were told that their advice was not desired. Nor was assistance sought from the Baltimore County Community Action Agency, which -- as the County's Overall Program Design itself recognizes -- is a key agency with respect to problems affecting minorities and the poor in the County.

It is at once tragic and ironic that organizations such as these should be excluded from the formulation of a program intended to educate all segments of the community.

The proposal states that the Teachers Association of Baltimore County will be utilized, but gives no indication of what its role will be. While the proposal also states that the Board of Education is seeking Federal funding to add to its community relations staff, there is no indication that the Board of Education is committed to devoting such resources -- if obtained -- to the education program.

In a similar manner, the proposal states that the County will seek donation of air-time by local radio and television stations, but there is no indication that such donation might be forthcoming.

For all these reasons, then, it does not appear to us that the County's proposed education program remotely resembles an adequate response to the needs identified by your office.

In addition to the education program, there are numerous other affirmative action steps which the County can implement, or begin to implement, without need to await further "study."

One of these steps, for example, is to sit down with HUD representatives, along with representatives of the State Community Development Administration, and other State officials, in order to ascertain how the County reasonably can now draw upon the variety of HUD housing assistance programs available to the County.

Other agencies stand ready to give technical or financial assistance to the County. For example, cooperative arrangements could be made with the State Planning Department, or other appropriate agencies, to locate sites in the County appropriate for lower income housing. The State Human Relations Commission similarly is available to advise the County on creating effective civil rights and community relations programs.

In seeking the assistance of the County, Baltimore City in the past has been rebuffed. For example, Robert C. Embry, Jr., Commissioner of the Baltimore City Department of Housing and Community Development, testifying at the Commission's August 1970 hearing, stated that the City had been ignored by the County when it requested permission to use Federal funds to lease public housing units in Baltimore County, in order to help solve the City's overwhelming problem of insufficient public housing units. There is

no reason why these policies cannot be reversed by the County. Immediate, good faith negotiations with the City on these and related matters relating to the welfare of the region, would seem a minimum component of reasonable affirmative action.

As another example, the County could make a clear, detailed commitment with respect to the housing needs of new employees at the facilities of the Social Securities Administration at Woodlawn.

Experts in your office doubtless could identify many other affirmative action measures which the County could take to meet identified problems. In addition, program documents of the Baltimore County Community Action Agency suggest a host of ways in which the County more effectively could meet its responsibilities with respect to the problems of low income and minority persons.

As in the case of "affirmative action" programs in employment, no one set of remedies need be prescribed or dictated. The requirement instead is action evidencing a good faith commitment by the County to undo the effects of past discriminatory exclusion.

A word should be said, finally, regarding the role of the Regional Planning Council (RPC). Under the applicable laws and regulations, area planning organizations such as RPC are supposed to shoulder the primary burden of assuring sound and effective metropolitan planning. However, as HUD has acknowledged in the Baltimore area, where there is a serious problem of correcting the effects of past exclusionary practices and policies, where action-oriented planning by one suburban jurisdiction (Baltimore County) is particularly crucial to the solution of this problem, and where the area planning organization has failed adequately to shoulder its burdens, then HUD must become directly concerned with the planning and other affirmative action measures adopted by such jurisdiction.

This is not to say, of course, that the inadequacy of RPC's performance can be forgotten. On the contrary, this is a matter with which the State Committee is most concerned, and which we will wish to pursue with you in detail at a later time.

The RPC is mentioned here, however, because of the possibility we see that the County may seek to exploit as a delaying device the inadequate performance of the Regional Planning Council.

Thus, the date on which the County proposes to complete its undefined housing plan is June 30, 1973. This extraordinary postponement of tangible action by the County may be based on the fact that RPC's "Area Housing Council" is to recommend a housing plan for the region by December 31, 1972. The Area Housing Council -- operating with no clear mandate or authority, and without

the necessary staff resources and expertise -- reflects abdication by RPC of its own responsibilities to give effective planning assistance and direction to housing efforts within the region. Any notion that Baltimore County is awaiting, or needs to await, direction from the Area Housing Council is patently absurd.

Even were the RPC ultimately to promulgate a "fair share" plan of the type adopted by the Washington Council of Governments, this would do no more than suggest a relative ceiling on the obligation of Baltimore County to assume its fair share of responsibility for dealing with the problems of the region. It would demarcate a stopping place, not a starting place. This provides no excuse for a refusal to begin the job now.

The foregoing are some of the State Committee's principal concerns. In matters of detail, there are a number of other substantial objections and questions we have with respect to the County's proposed housing "planning" and other affirmative action.

In my letter to you of February 23, 1972, I stated as follows:

At the close of our meeting of February 17, I requested that prior to a determination by HUD that Baltimore County is eligible for assistance, the Maryland Committee be given an opportunity to discuss the bases for such determination with your office. To make this possible, I also requested that in advance of such discussion, we be given access to documents reflecting Baltimore County's commitments, as well as the other elements -- including those referred to above -- on which the determination would be based.

You indicated that you were amenable to such an arrangement -- unless "overruled" by the regional or national office of HUD.

This request, as you know, grew out of the long history of concern and involvement on the part of the Maryland Committee and the U.S. Commission on Civil Rights with problems of fair and open development of the Baltimore metropolitan area. In addition, a number of the Maryland Committee's members, including myself, are residents of Baltimore County and are keenly interested as citizens and community leaders in the fair and

open development of the County. Other members of the Committee who live in metropolitan Baltimore are interested because of the impact that developments in Baltimore County have on the rest of the region.

Can you please advise us at once as to the status of the requested arrangement for prior comment. If, for any reason, you are not now in a position to confirm this arrangement, can you please advise us in detail when and how this matter will be resolved.

I have received no reply to this request. I sincerely hope that this delay does not presage a decision by HUD that the Maryland State Committee is not to be accorded the opportunity we request.

As I noted in my letter of February 23, the determinations HUD is to make with respect to Baltimore County's compliance with planning and equal opportunity requirements are momentous ones. Culminating a year and one half of enforcement effort, these determinations will profoundly influence the extent of fair and open development in the County and region for years to come.

The State Committee, therefore, repeats its request that, prior to a determination of compliance and a commitment on release of funds to the County by HUD, the State Committee be given an opportunity to be heard on Baltimore County's final proposals.

I await your early response.

Sincerely,



REV. DAVID MACPHERSON, Chairman, Housing Task Force
Maryland Committee of the U.S. Commission on Civil Rights

cc: Samuel C. Jackson
Wagner Jackson
William Kaplan
Theodore Robb
Samuel J. Simmons
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