

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Richard B. Austin

Cause No. 66 C 1459 & 66 C 1460 (consolidated)

Date December 17, 1971

Title of Cause DOROTHY GAUTREAUX, et al., v. Chicago Housing Authority, etc, et al.

Brief Statement
of Motion Motion for leave of court for defendant, George W. Romney,
to file his memorandum in opposition to plaintiffs' motion for
further relief instante,

WJ 12/17/71
The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and
Addresses of
moving counsel JAMES R. THOMPSON (AUSA) MURRAY
United States Attorney
219 S. Dearborn St.
Chicago, Ill. 60604

Representing

Names and
Addresses of
other counsel
entitled to
notice and names
of parties they
represent. Alexander Polikoff Patrick W. O'Brien
One of the attorneys For the Chicago
of the plaintiffs Housing Authority
109 N. Dearborn St. c/o Mayer, Brown & Platt
Chicago, Ill. 60602 231 S. LaSalle St.
Chicago, Ill. 60604

JCM:ft

Reserve space below for notations by minute clerk
granted (DRAFT)

Consolidated cause contd to Dec.23,1971 for hearing

Custodian J
Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY
and GEORGE W. ROMNEY, et al.,
Defendants.

No. 66 C 1459
66 C 1460
(consolidated)

*court file
(not pleadings
book)*

NOTICE

TO: Alexander Polikoff
109 N. Dearborn St.
Chicago, Ill. 60602

Patrick W. O'Brien
c/o Mayer, Brown & Platt
231 S. LaSalle St.
Chicago, Ill. 60604

PLEASE TAKE NOTICE that on December 17, 1971 at the opening of Court or as soon thereafter as counsel may be heard, I will appear before Judge Austin in the courtroom usually occupied by him in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, or before such other judge who may be sitting in his place and stead, and then and there present motion for leave of court to file its memorandum in opposition to plaintiffs' motion for further relief instant.

At which time and place you may appear if you see fit.

UNITED STATES ATTORNEY

STATE OF ILLINOIS)
COUNTY OF COOK) SS

being first duly sworn on oath, deposes and says that he is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the day of December, 1971 he placed a copy of the foregoing Notice, together with a copy of motion & order in a Government franked envelope addressed to each of the above-named individuals, and deposited envelope in the United States mail chute located in the United States Courthouse, Chicago, Illinois, on said date at the hour of about 3:30 p.m.

JCM:ft

SUBSCRIBED AND SWORN TO before me
this day of December, 1971

NOTARY PUBLIC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY
and GEORGE W. ROMNEY, et al.,

Defendants.

Civil Action Nos.

66 C 1459

66 C 1460

(consolidated)

MOTION FOR LEAVE OF COURT TO FILE
ITS MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR FURTHER
RELIEF INSTANTER

Now comes George W. Romney, Secretary of the Department of Housing
and Urban Development, by JAMES R. THOMPSON, United States Attorney
for the Northern District of Illinois, and moves this court for leave of
court to file its memorandum in opposition to plaintiffs' motion for
further relief instanter.

JAMES R. THOMPSON
United States Attorney

JCM:ft

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,
Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY
and GEORGE W. ROMNEY, et al.,
Defendants.

Civil Action Nos.

66 C 1459
66 C 1460
(consolidated)

ORDER

This matter coming on to be heard on the motion of defendant, George W. Romney, Secretary of the Department of Housing and Urban Development, for leave of court to file his memorandum in opposition to plaintiffs' motion for further relief instant, due notice having been given, and the court being fully advised in the premises:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendant, George W. Romney, Secretary of the Department of Housing and Urban Development, be and hereby is granted leave of court to file his memorandum in opposition to plaintiffs' motion for further relief instant.

E N T E R:

DATED: _____

J U D G E

JCM:ft

(9)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY
and GEORGE W. ROMNEY, et al.,

Defendants.

Civil Action Nos.

66 C 1459

66 C 1460

(Consolidated)

MEMORANDUM IN OPPOSITION TO PLAINTIFFS'
MOTION TO REQUIRE DEFENDANT GEORGE W.
ROMNEY, SECRETARY OF THE DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT, TO PROPOSE
COMPREHENSIVE PLANS WHICH CAN BE
METROPOLITAN IN SCOPE TO CORRECT THE EFFECTS
OF PAST RACIAL DISCRIMINATION

INTRODUCTION

By this suit, and its companion Gautreaux, et al. v. Chicago Housing Authority, et al., No. 66 C 1459, plaintiffs have sought to make the Department of Housing and Urban Development equally responsible for the segregated housing that prevails in that City and equally responsible for its elimination. The logical consequences of that theory may be summarized in the following progression: ^{1/} (1) establish through the "statistical

1/ If there ever was any doubt concerning plaintiffs' ultimate intent, it is dispelled by the following statement of plaintiffs' counsel at page 782 of the transcript (September 24, 1971):

"The federal government must be required to provide a choice of housing locations simultaneously with its efforts to gild the ghetto. Unless that is done the bleak prognosis that cities 'will be predominantly black and brown and broke by 1980' will become a reality.

This case - you, your Honor, have an opportunity in my judgment to see to it that that does not happen."

method" in No. 66 C 1459 that the CHA discriminated against plaintiffs in the public housing program because of the actions of the Chicago City Council, reflecting the prejudices of the people of the City of Chicago; (2) establish in No. 66 C 1460, through the record and judgment in No. 66 C 1459, that because HUD knew of the discrimination found to exist in No. 66 C 1459 and did not correct it but continued to fund the public housing program, HUD discriminated against plaintiffs; (3) establish in Gautreaux v. Romney, Civil Action No. 66 C 1460, that despite the exercise of its equitable powers in Gautreaux v. Chicago Housing Authority, Civil Action No. 66 C 1459, the Court has not been able to eliminate the effects of past discrimination in the Chicago public housing program because of the actions of the City of Chicago; (4) establish that HUD is furnishing funds to the City of Chicago for other HUD programs, such as the Model Cities program, and halt the flow of those funds until the City acts to correct past discrimination in the public housing program, even though an interruption in the disbursement of those funds injures the very persons whom the plaintiffs purport to represent before this Court; (5) establish that HUD administers more than 70 programs, many of which are utilized by the City of Chicago and the Counties that surround it, and that HUD's assistance extends into those jurisdictions; (6) find a duty on the part of HUD to employ all of its programs, regardless of their relationship to the low-rent public housing program, so as to undo the effects of past discrimination in the public housing program; (7) require HUD to develop a "comprehensive plan" to employ all of its programs in the entire metropolitan area to undo the effects of discrimination in the public

housing program; (8) recognize that HUD may provide financial assistance only in response to application from public bodies of the State of Illinois or from private parties; (9) establish that these public bodies and private parties have not applied to HUD for public housing units or other subsidized housing in numbers sufficient to serve the needs of lower income families; (10) establish that the elimination of discrimination against poor families residing within the City of Chicago results in part from discrimination by the surrounding jurisdictions; (11) compel HUD to administer all of its programs so that no public body and no private party in the Chicago Metropolitan Statistical Area ^{2/} may obtain assistance through any HUD program unless the jurisdiction involved accepts a quota of public housing and housing for lower income families which will be available for the use of public housing applicants or tenants now residing in the City of Chicago. While appeal is pending as to steps (2), (3) and (4) described above, this Court is now called upon to consider the issues presented by steps (5), (6) and (7) of plaintiffs' own "comprehensive plan."

We suggest to this Court that the way out of the difficulty of which plaintiffs complain is simple, direct, and within easy reach of plaintiffs and this Court. It is also the answer to the plaintiffs' apparent basis for the present proceedings in the consolidated cases--the need for speed. From all evidence produced in the consolidated cases, the core of the problem at all times--1950-1964 and 1969-1971--has been the reluctance of

^{2/}The Chicago Metropolitan Statistical Area (CMSA) includes the following counties: Cook, Kane, Will, DuPage, Lake and McHenry

the City of Chicago to approve sites for public housing projects in white neighborhoods. Plaintiffs have argued in their most recent motion against the Chicago Housing Authority that this Court can fashion an order requiring the Chicago Housing Authority to by-pass the state statute which mandates approval of the sites for public housing by the City Council in cities of the required population, specifically, the City of Chicago. Chap. 67 1/2, Ill. Rev. Stat., Section 9 (1969). We agree that there is ample precedent for by-passing State statutes which would impede justice to parties who have not obtained effective relief. But by-passing the requirement for city approval of sites is not the direct way to fashion relief. The City's complete cooperation is necessary to build public housing projects. There are matters of zoning, building permits, building codes--all properly matters of City concern, and all offering other opportunities for delay. Plaintiffs can obtain speedy and effective relief only by adding the City of Chicago, its Mayor, and the City Councilmen (hereinafter referred to as the "City") as defendants in these proceedings.

The theory that the plaintiffs are pursuing will not bring about the speedy and direct results needed. The steps which HUD is pursuing in its efforts to correct the consequences of past discrimination in housing are outlined in the Statement of George Romney, Secretary of the Department of Housing and Urban Development, to the Subcommittee on Civil Rights Oversight of the Committee on the Judiciary of the House of Representatives, on December 9, 1971, a copy of which is annexed hereto as Appendix A.

Plaintiffs would superimpose their own notions of what should be done in order to achieve fair housing objectives upon HUD's departmental measures, and have this Court administer separate requirements in the Chicago Metropolitan Statistical Area. We submit that this can lead to nothing but chaos. Plaintiffs protest that they want a "plan that promises realistically to work, and promises realistically to work now." That plan is the one outlined by Secretary Romney in his testimony. All that is needed to make it fully effective in Chicago is to join the City as a party defendant in these proceedings.

ARGUMENT

I. HUD HAS NEITHER FUNDS, STAFF RESOURCES NOR STATUTORY AUTHORITY TO DEVELOP THE PLAN THAT PLAINTIFFS ARE SEEKING

The plaintiffs argue that Section 808(d) of the Housing and Urban Development Act of 1968 authorizes defendant, George W. Romney, to prepare a comprehensive housing program for the metropolitan area of Chicago. In the Statement of George W. Romney, Secretary of the Department of Housing and Urban Development, given to the Subcommittee on Civil Rights Oversight of the Committee on the Judiciary of the House of Representatives, the Secretary interprets Section 808(d) of the Housing and Urban Development Act of 1968 as not granting additional power but merely to instruct him in the manner in which to administer his authority under the various statutory programs. (See pages 6 to 13 of the Romney Statement attached to this memorandum as Appendix A.)

HUD administers more than 70 programs in the field of housing and urban development. These programs are described in "Progress Report on Federal Housing and Urban Development Programs," March 1970, Subcommittee on Housing and Urban Affairs, Committee on Banking and Currency, United States, 91st Cong., 2d Sess., supplemented by "Section by Section Summaries, Emergency Home Finance Act of 1970 and Housing and Urban Development Act of 1970," U. S. Department of Housing and Urban Development, both annexed hereto as Appendix B. In none of these programs is HUD the activating party; HUD builds no homes, constructs no sewers, prepares no plans, rehabilitates no homes, and renews no neighborhoods. HUD provides the funds, the insurance or guarantee and some technical assistance. Others build the homes, the sewers, the water distribution systems, prepare the plan, clear and rebuild the neighborhoods. HUD cannot compel a community to accept its funds, insurance, or guarantee, and must await an application for assistance from the proper source. James v. Valtierra, 402 U. S. 137 (1971). Even if HUD could prepare plans for the development of public housing or any other kind of housing, they would produce no housing. The plans would have to be acceptable to, and adopted by, the public bodies or private persons who must initiate and do the building.

3/On October 2, 1971 in accordance with the rule-making power of the Secretary of the Department of Housing and Urban Development, the Secretary has proposed a site selection criteria to determine priority funding projects under Section 235 and Section 236. The implementation of this proposed regulation occurs only upon submission of an application for funding to the Department of Housing and Urban Development. (36 F.R. 19316) Appendix C.

Section 808(d) of the Housing and Urban Development Act of 1968 does not provide the authority for George W. Romney to develop a metropolitan-wide housing program and to impose said metropolitan-wide housing program on the various localities and public bodies within the Chicago metropolitan area.

II. WHILE PLAINTIFFS HAVE NOT OBTAINED EFFECTIVE RELIEF IN THE COMPANION CASE, THERE IS A MEANS OF PROVIDING IT THERE.

HUD has never "agreed and stated many times that full relief to remedy the effects of past discrimination cannot be provided solely within the companion case." We agree that adequate relief has not been obtained in the companion suit. But the reason no public housing has been built in Chicago is not because plaintiffs, aided by the equitable powers of this Court, cannot obtain such relief in the companion suit. It is because plaintiffs have not applied for that relief. Plaintiffs have not asked joinder of the City as defendants, or for an order addressed to the City defendants in Gautreaux v. Chicago Housing Authority Civil Action No. 66 C 1459. That avenue is clearly open to them, and if it is not taken, the conclusion is inescapable that plaintiffs have in view more ambitious plans. What they seek to accomplish is the administration by this Court of all HUD programs in the Chicago metropolitan area, not to accomplish Congressional objectives, but to achieve a single objective--the dispersal of public housing throughout the metropolitan area by Court decree.

III. THE BURDEN OF COMING FORWARD WITH A REQUEST FOR APPROPRIATE RELIEF IS INITIALLY UPON THE PLAINTIFFS. IF THE PREPARATION OF A PLAN IS INVOLVED, THAT PLAN SHOULD EMANATE FROM THE CHICAGO HOUSING AUTHORITY AND THE CITY.

Plaintiffs argue that "the burden of coming forward with a plan which promises meaningful and immediate progress to correct the effects of past discrimination is upon the party responsible." That is not a complete statement of the law on the point. The party directed to act must have the legal power to act apart from the Court's order.^{4/} This procedure is in line with general equity practice. As the Supreme Court stated most recently in Swann v. Charlotte-Mecklenburg Bd of Ed., 28 L.Ed.2d 554, 566, quoting Hecht Co. v. Bowles, 321 U.S. 329-330:

"The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity have distinguished it".

The authority to plan and to construct public housing is vested in the Chicago Housing Authority with the cooperation of the City of Chicago as outlined in the Illinois Housing Cooperation Law, Chap. 67 1/2 Ill. Rev. Stats., Section 28-35 (1969). The power to plan and construct public

^{4/} We know of no instance in which a Court has directed an order to a party not vested with power to perform. The closest approach which we have found is the order addressed to the Texas Education Agency in United States v. State of Texas, 321 F. Supp. 1043 (1970), affd., Fifth Circuit, July 9, 1971 (not yet reported); certiorari filed sub. non. Edgar v. United States, No. 71-501, 40 L.W. 3243. The Court, having the several school districts before it, also issued an order against the State-wide agency, the Texas Education Agency. However, in this suit the Texas Education Agency is authorized to take direct action in some but not all of the matters in dispute.

housing projects is not vested in HUD.^{5/} The responsibility to draft a comprehensive plan rests with the City of Chicago and the Chicago Housing Authority since they possess the power to plan and construct housing within the City of Chicago. HUD's responsibility is limited to evaluating said plan.^{6/}

Moreover, plaintiffs also have the duty to disclose to this Court the full equitable relief they seek. Since plaintiffs have not moved in Gautreaux v. Chicago Housing Authority, Civil Action No. 66 C 1459, to obtain direct relief against the City defendants, they should now explain their failure to do so and disclose the full scope of the relief that they are seeking. "As with any equity case, the nature of the violation determines the scope of the remedy." Swann, supra, at page 567.

^{5/} Plaintiffs place great reliance on some of the thousands of school desegregation cases which the Courts have adjudicated, and in the brief in support of this motion, particularly on United States v. School District No. 153 of Cook County, 286 F. Supp. 786, 404 F.2d 1125. We note that the Department of Health, Education, and Welfare found no discriminatory conduct by this School District, and continued to fund it. HEW was not a defendant in the suit. We know of no suit in which the Department of Health, Education and Welfare, which extends federal financial assistance to the schools, has been a defendant, nor do we know of any suit in which HEW has been ordered to propose a comprehensive plan. HEW aid to the Courts has been on a voluntary basis, analyzing plans proposed by school boards where planning power is vested. Yet the schools are desegregating. HUD stands ready to render the same service to this Court in No. 66 C 1459.

^{6/} In Crow v. Brown, Civil Action No. 14954, United States District Court for the Northern District of Georgia, the Court dismissed the Secretary of the Department of HUD from the cause of action, and ordered the county to submit plan and have that evaluated by the Secretary of the Department of HUD. Crow v. Brown, 40 Law Week 2163 (Sept. 7, 1971).

In this case the violation occurred in the public housing program in the City of Chicago, not in the public housing program of the Chicago Metropolitan Statistical Area. Plaintiffs' apparent desire to expand the reach of the relief they seek in this case would appear to have less to do with expeditious construction of public housing projects in white neighborhoods in the City of Chicago than to do with pioneering new avenues and approaches to the spread of subsidized housing into suburban areas. That, we submit, is not a judicial function but a proper matter for consideration by the legislative and executive branches of the Government.

IV. THE PLAN SOUGHT BY PLAINTIFFS INFRINGES UPON THE SECRETARY'S DISCRETION, AND ULTIMATELY VIOLATES THE DOCTRINE OF SEPARATION OF POWERS

In Swann, supra, the Court made several observations pertinent to plaintiffs' pending motion:

"No fixed or even substantially fixed guidelines can be established as to how far a court can go, but it must be recognized that there are limits." (28 L.ed. 2d at 573, emphasis supplied.)

"The Court of Appeals, searching for a term to define the equitable remedial power of the district courts, used the term 'reasonableness.' In Green, supra, this Court used the term 'feasible' and by implication 'workable,' 'effective,' and 'realistic' in the mandate to develop 'a plan that promises realistically to work, and ... to work now.' ***However, in seeking to define the scope of remedial power or the limits on remedial power of courts in an area as sensitive as we deal with here, words are poor instruments to convey the sense of basic fairness in equity. Substance, not semantics, must govern, and we have sought to suggest the nature of limitations without frustrating the appropriate scope of equity." (28 L.ed. 2d at 575)

"The elimination of racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. One vehicle can carry only a limited amount of baggage. (28 L.ed.2d at 573, emphasis supplied)

"Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults." (28 L.ed.2d at 566)

We suggest that plaintiffs seek to have one vehicle carry an unlimited amount of baggage. Discrimination in the public housing program in Chicago is to carry the baggage of dissemination of subsidized housing throughout the Chicago Metropolitan Area. We suggest that remedial judicial authority does not put this District Court in the shoes of the Secretary of the Department of Housing and Urban Development. We suggest that there are limits on judicial authority, and that substituting judicial judgment for executive discretion in developing plans for the Chicago Metropolitan Area transcends those limits, and in so doing violates the separation of powers.

The Department of Housing and Urban Development administers more than 70 programs, with each program having important Congressional objectives and goals entirely apart from the provision of public housing. Moreover, all of these programs involve a variety of considerations and interrelated decisions in areas not committed to the judiciary but to the legislative and executive branches. In Norwalk Core v. Norwalk Redevelopment Agency, 395 F.2d 920 (2 Cir. 1968), the Court discussed those considerations and the reasons for judicial deference

separation of powers.

renewal issues because of separation of powers as it relates to urban renewal, stating:

"We cannot doubt the necessity of discretionary decision making in urban renewal planning. This necessity would render unfit for judicial decision many questions concerning urban renewal. *** This does not mean, however, that every case of controversy touching this area lies beyond judicial cognizance. Case-by-case inquiry is necessary, with the due regard for the need of judicially discoverable and manageable standards for resolving problems to be undertaken, and with recognition of the role played by the coordinate branches of the Federal Government in the planning and implementation of urban renewal.***"

The extent to which relocation of those displaced by urban renewal is required will necessarily affect the pace at which urban renewal can take place, and the priority of goals in urban renewal planning. Issues are at stake which are, in the truest sense of the word, political. For example, if public housing were required to be available for every displacee of urban renewal, then it would follow, at least in the present condition of the nation's cities, that the building of public housing would be assigned a very high priority. The standard for relocation is thus appropriately set by the legislative and executive branches of government not by the courts.***"

Norwalk Core v. Norwalk Redevelopment, 395 F.2d 920, 929 (2 Cir. 1968)

Certainly under the separation of powers doctrine, the remedial power of this Court is limited to the correction of the racial segregated public housing program within the City of Chicago.

WHEREFORE, defendant George W. Romney, respectfully requests that plaintiffs' motion to require the Department of Housing and Urban Development to propose a comprehensive plan to correct practices of racial discrimination be denied.

JAMES R. THOMPSON
United States Attorney

JCM:ft

STATEMENT OF GEORGE ROMNEY
SECRETARY OF HOUSING AND URBAN DEVELOPMENT
TO THE
SUBCOMMITTEE ON CIVIL RIGHTS OVERSIGHT
OF THE
COMMITTEE ON THE JUDICIARY
OF THE
HOUSE OF REPRESENTATIVES

DECEMBER 9, 1971

APPENDIX A

I am pleased to be here to discuss with you the Federal Government's role in achieving equal opportunity in housing. Civil rights and housing is a subject in which I have been involved directly and personally many times over the past 30 years.

As Vice-President of the Detroit Victory Council I fought segregated war housing during World War II. In 1946, I appeared publicly before the Detroit Common Council to protest segregation in public housing. In 1964 I pleaded with the delegates at the Republican National Convention to strengthen the civil rights section of the platform. As a delegate to Michigan's Constitutional Convention, I helped lead the fight for the first constitutionally established state Civil Rights Commission. And as Governor I worked to build the Commission into a well-staffed, aggressive agency and successfully pushed for legislation which expanded its powers in the housing field.

During this period, I have gained a growing awareness of the unequalled complexity of issues and problems which have come to be associated with cities, housing and race, and the ways to overcome racial discrimination.

The President's statement last June on Federal policies relating to equal housing opportunities lays out and deals with these complex issues candidly and thoroughly and enunciates policies capable of achieving absolutely essential progress in establishing equal opportunity and freedom of choice for all in housing. It tries to separate facts from myths, recognizing that myths about race and housing have been a strong and often unacknowledged force in the nation's housing patterns.

As a delineation of the Federal role in achieving equal opportunity and freedom of choice for all in housing, the President's statement stands as a superior example of leadership. Rather than remaining silent, and thus avoiding difficult issues, the President has articulated the commitments and policies which have guided, and which will guide, the Administration.

His forthright statement provides a springboard for action. I am convinced we can move forward now -- faster, more firmly and more effectively than ever before to help solve one of our nation's oldest, most entrenched and fateful problems.

There is no need to discuss here at length the causes of present segregation in housing. We all know that throughout most of our country's history the dominant majority supported or condoned social and institutional separation of the races. This attitude became fixed in public law and public policy at every level of government and in every branch of government. Thus it was adopted as a matter of course by the Federal Government when it entered the housing field in the 1930's. It continued after World War II. More recently, the dislocating effects of urban renewal, interstate highway and other Federal programs have contributed to segregation and isolation of the poor and minority groups in our cities.

The President emphasized the high costs of racial segregation in his statement:

"Separation of the races, particularly when it is involuntary, has damaging consequences. One is racial isolation -- the social isolation of the races from each other -- an estrangement that all too readily engenders unwarranted mistrust, hostility and fear.

"Another consequence of involuntary racial separation is the waste of human resources through the denial of human opportunity. No nation is rich enough and strong enough to afford the price which dehumanizing living environments extract in the form of wasted human potential

and stunted human lives -- and many of those living environments in which black and other minority Americans are trapped are dehumanizing.

"Another price of racial segregation is being paid each day in dollars: in wages lost because minority Americans are unable to find housing near the suburban jobs for which they could qualify. Industry and jobs are leaving central cities for the surrounding areas. Unless minority workers can move along with the jobs, the jobs that go to the suburbs will be denied to the minorities -- and more persons who want to work will be added to the cities' unemployment and welfare rolls."

Although much has been and is being done to remedy past shortcomings of Federal housing policy, such discrimination in housing is still widespread. Our metropolitan areas today consist of miles of slums, miles of gray areas, and miles of sprawling suburbs, some modest and some affluent. These are the miles which separate the black and the poor from good schools, from well-paying jobs, and from equal housing opportunities.

As a result of an intricate and subtle web of public policies and private prejudices, in many urban areas there exist two sets of housing markets, with two sets of people who make them work -- two sets of builders, real estate agents and mortgage brokers. Consequently, minorities shop for housing

in one section and the white majority shops for housing in another. This dual housing market system exists in most cities and limits choices in housing. It denies Americans the right and ability to choose.

In his statement, the President defined equal housing opportunity in terms of the right and ability to choose. He said,

"By 'equal housing opportunity', I mean the achievement of a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion or national origin."

Building all federally assisted housing in the suburbs will not by itself remedy past discrimination or expand housing choice in metropolitan areas. Presently, the poor, white, black, brown and yellow, are concentrated and largely confined to our central cities. In resolving their housing needs, we can neither abandon our central cities, nor can we create further concentrations of federally assisted housing within them or new ones outside them. The President spoke on this point in his statement:

"As a major part of our national effort to meet these housing needs -- an effort which is both private and governmental -- federally-assisted housing is being built at a rate approaching 3/4 of a million units a year. These units are needed. They are being built.

And they must be built someplace. The question is where.

"If all the federally-assisted units are packed together in one type of community or one kind of location, we will only exacerbate the social and, in all probability the racial isolation of our people from each other.

"If we build federally-assisted instant ghettos, we fail both our communities and the people we are trying to help.

"If we impact or tip the balance of an established community with a flood of low-income families, we do a disservice to all concerned.

"The answers to these practical considerations are not simple -- but they are of great importance."

Federal, state and local government, private leadership and the people of this country must fully dedicate themselves to finding those answers if we are ever to solve our racial and housing problems. And though the Federal Government by itself can never end discrimination in housing, it must play the leading role in that endeavor.

I would now like to turn to the specifics of the Federal role in achieving equal opportunity in housing. First I will set forth the broad policies which will guide us within the framework of Congressional acts and judicial opinions. Then I

will explain how these policies manifest themselves in HUD's programs.

The President's statement last June set the standards by which we are guided:

" . . . we set three basic requirements for our program to achieve equal housing opportunity: It must be aimed at correcting the effects of past discrimination, it must contain safeguards to ensure against future discrimination, and it must be results-oriented so its progress toward the overall goal of increasing housing opportunities can be evaluated.

"The administration is embarked upon this course. It must and will press forward firmly.

"The chief components of such a program include the firm enforcement of laws relating to equal housing opportunity; the development of appropriate equal housing opportunity criteria for participation in programs affecting housing; the development of information programs; and the development of policies relating to housing marketing practices."

The President also stated his interpretation of the affirmative action mandate of Title VIII of the Civil Rights Act of 1968, which directs the Secretary of Housing and Urban Development to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title." The President said:

"I interpret the 'affirmative action' mandate of the 1968 Act to mean that the administrator of a housing program should include, among the various criteria by which applications for assistance are judged, the extent to which a proposed project, or the overall development plan of which it is a part, will in fact open up new, nonsegregated housing opportunities that will contribute to decreasing the effects of past housing discrimination. This does not mean that no federally assisted low- and moderate-income housing may be built within areas of minority concentration. It does not mean that housing officials in Federal agencies should dictate local land use policies. It does mean that in choosing among the various applications for Federal aid, consideration should be given to their impact on patterns of racial concentration."

In the face of this explicit affirmation of a vigorous national fair housing policy, debate continues about the extent of the powers of the Federal Government.

The root of this debate appears to lie in differing perceptions of Federal powers with respect to local communities to which it renders some form of assistance. Some people urge that the Federal Government has the right and the duty to cut off funds in all its programs to a community which discriminates in one. I believe Congress has denied the executive branch the authority to do that.

The legislative history of the Civil Rights Act of 1964 is clear throughout that Congress did not intend by that enactment

to grant such authority. Indeed the key to passage of Title VI of the Act was the so-called "pin point" proviso which was added to the bill by the Mansfield-Dirksen Amendments introduced on the floor of the Senate. The "pin point" proviso was intended to limit Title VI termination of funds solely to the program in which unlawful discrimination has been found.

Senator Humphrey, floor leader for the bill, stated unequivocally that authority for total fund cut-off was not contemplated. The Congressional Record for June 4 1964 reports that he said --

"Some Senators have expressed the fear that in its original form title VI would authorize . . . canceling all Federal assistance to a State if it were discriminating in any of the federally assisted programs in that State.

"As was explained a number of times on the floor of the Senate, these interpretations of title VI are inaccurate . . . Since this was our intention, we have made this specific in the provisions of title VI by adding language to 602 to spell out these limitations more precisely."

Senator Pastore and Senator Ribicoff described Title VI in the same way. Senator Pastore said --

"One important thing must be kept in mind. Title VI is not a device to terminate all Federal aid to a State or community because there has been discrimination in one specific program."

Senator Ribicoff said --

"One could not cut off any other program, and the cutoff would be confined to the jurisdiction where discrimination was found."

Nor does the Civil Rights Act of 1968 persuade me that it is a mandate for such drastic action.

In hearings before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency in 1967 on a bill which contained language similar to that now in 808(d) of Title VIII requiring all Executive departments to act affirmatively in the field of fair housing, Senator Proxmire and former Secretary Weaver engaged in a colloquy which reveals what they believed the law to be.

Senator Proxmire asked Secretary Weaver:

"And I'm interested in the possibility of this kind of a provision. I will just read one short quotation from it.

'No Federal program of grants or loan administered by the Department of Housing and Urban Development shall be made available to any jurisdiction within which an adequate amount of decent housing as determined by the Secretary of Housing and Urban Development is not available for low and moderate income persons by reason of restrictions in zoning ordinances or building codes or other factors within the reasonable control of the jurisdiction or the State within which the jurisdiction is located.'

"I would not want to put you on the spot, Mr. Weaver, but if we are going to make any progress here it seems to me that this is one way to do it."

Secretary Weaver replied:

"As to whether or not that particular provision would be workable or whether or not it would be something that could be administered is something I could not say off the top of my head. I think I would have to look at that rather carefully."

Clearly both these men, dedicated as they were and are to the cause of civil rights, did not believe that Title VI authorized fund cut-off or that an "affirmative action" mandate without explicit language such as suggested by Senator Proxmire includes such authority.

In fact both the Civil Rights Act of 1968 itself and the debates and compromises which led to its passage focus on the enforcement powers of the agency which handles fair housing complaints, not on cutting off funds.

Some also argue that in the absence of any Congressional statement, the Constitution, notably the Due Process Clause

of the Fifth Amendment, requires that all HUD funds be cut off from a community which discriminates in one program. If this were true, then the pin point proviso of the 1964 Civil Rights Act would not be Constitutional. Certainly, the Congressmen who made clear in the legislative history that Title VI is not intended to permit cutting off all Federal funds to a community must have believed what they were doing did not violate the Constitution.

Unless Congress gives explicit authority on this matter, I believe that it would be unlawful for the executive branch to try to exercise it. In the case of Youngstown Sheet and Tube v. Sawyer, the United States Supreme Court held that President Truman could not use the Constitution to seize steel mills where Congress had spoken on the subject and refused to authorize government seizures of property as a method of settling labor disputes. It seems plain to me that this precedent is directly analogous to the situation with respect to Title VI and Title VIII.

Another misconception of the legal basis for the Federal role in housing relates to HUD's actual function in housing and community development programs. The President put this in proper perspective in his statement:

"[T]he Federal program role -- as the governing statutes make clear -- is essentially one of responding to local or private initiatives, rather than one of imposing its programs on State and local governments.

"In none of HUD's grant programs does the Department act directly. The Department builds no housing, develops no land use plans, clears no slums and constructs no sewers. Instead, HUD provides, within its statutory and regulatory framework, financial assistance to local developers and agencies, both public and private, who build and manage housing, and engage in planning and community development activities.

"The extent to which HUD program activity is dependent on local initiative and execution is frequently overlooked, but is an important element in considering policy issues. Sites for HUD-assisted housing must be selected and acquired by local sponsors -- public or private -- and housing developed on those sites must conform to local zoning and local building codes. Planning performed with HUD assistance is done by State and local governmental bodies. Community development activities -- urban renewal, water and sewer, or open space projects, for example -- are initiated and executed by local government."

In the face of this modus operandi defined by Congress, some urge that HUD should nevertheless undertake to override local land use planning or impose on local communities wide-ranging Federal schemes to expand the supply of housing. Permit me to remind those who so advise us that as recently as last year the Administration offered to Congress a modest legislative proposal which would have permitted the aggrieved sponsor of Federally assisted housing to seek a Court order to override local zoning in special cases where that zoning discriminated against otherwise acceptable housing developments solely because the proposed housing was to receive Federal subsidy. That proposal was not reported by committee.

Finally, many people inflate the influence of HUD's programs. Without minimizing the Federal role in creating problems or solving them, and without defending past policies which were indefensible, we must recognize that most housing, including the vast majority of suburban homes, has been built without any FHA involvement at all.

The water and sewer program, which is often cited as a powerful lever to force low-income housing into suburbs, has provided partial assistance to only about one in ten suburban

jurisdictions during its entire five-year life. The fact is that HUD programs are of marginal interest to most well established suburbs, and it is therefore sheer illusion to think that HUD can bring about overnight changes in the entire existing suburban physical and social landscape by turning Federal money on or off.

Although the Federal Government should not impose solutions to problems which ought to be solved locally, it is this Administration's firm policy to encourage State and local governments to work together to deal with housing problems in metropolitan areas on a metropolitan basis. The President sounded the keynote for this policy in his statement:

" . . . [N]ot only the Department of Housing and Urban Development but also the other departments and agencies administering housing programs -- the Veterans Administration, the Farmers Home Administration and the Department of Defense -- will administer their programs in a way which will advance equal housing opportunity for people of all income levels on a metropolitan areawide basis."

For the impact of the concentration of the poor and minorities in the central city extends beyond the city boundaries to include the surrounding communities. The city and the suburbs together make up what I call the "real city." To solve

problems of the "real city," only metropolitan-wide solutions will do. They are indispensable not only in housing, but in education, taxation, pollution and in many other of our urgent problems.

Passage of the Administration's National Land Use Policy Act, H. R. 4332, is an example of legislative action Congress should take to further the kind of regional and metropolitan approaches which can help to solve these problems.

Ultimately, the "real city" approach, the metropolitan-area approach, must be developed and implemented at the state and local level, not imposed from above. Such development is not a fantastic dream. I believe we are witnessing a new degree of interest, concern and effectiveness on the part of state and local governments. I see it in the resolution passed last week at the annual meeting of the League of Cities representing communities of all sizes, including suburbs. I see this in recent statewide zoning laws which foster sound housing policies, such as the Massachusetts Zoning Appeals Act. Under that Act the State government administratively reviews local actions which tend to exclude low and moderate income housing; under certain circumstances the State Agency may overrule the locality to permit construction of housing.

I also see evidence of this interest in the actions of regional councils. The members of the Washington Metropolitan Council of Governments are considering and acting jointly on problems of the "real city". The Miami Valley Regional Planning Commission in the Dayton, Ohio region has adopted a plan for allocating new low- and moderate-income housing throughout a five country area.

The Federal Government stands ready to help these efforts.

As the President said:

"We will encourage communities to discharge their responsibility for helping to provide decent housing opportunities to the Americans of low- and moderate-income who live or work within their boundaries.

"We will encourage communities to seek and accept well-conceived, well-designed, well-managed housing developments -- always within the community's capacity to assimilate the families who live in them."

* * *

"In the more complex and difficult area of providing subsidized housing in areas where it is needed, we will encourage communities and local developers to take into account the broad needs of the various groups within the community and of the metropolitan area."

And how do we "encourage" positive action in this field at this time? With more applications for assistance than we can fund, we select those which most fully satisfy the purposes of the legislation and the policies I have just discussed. We select those which most increase equal housing opportunity for all people of all income levels on a metropolitan area-wide basis.

Since late 1969 we have followed an informal, but explicit policy to avoid further concentrations of housing in areas of minority concentration. As I testified before the Civil Rights Commission, we are now beginning to see some preliminary results of that policy.

You should bear in mind, of course, that because of the many months lag between application and housing starts or completion, there is a corresponding lag in visible results. I believe, however, that the maps I am about to show you indicate an encouraging trend toward a broader variety of locational choice throughout metropolitan areas. Clearly, the maps do not show the detail on racial and economic characteristics which is necessary for a complete evaluation, but they do indicate an incipient trend.

BALTIMORE

The Baltimore map shows that before January 1970, 22 projects were built inside the city limits (shown inside the blue line) while only 2 projects were located outside the city limits. The black circles identify all subsidized housing of 20 units or more, including public housing, rent supplements, 221(d)(3), Sections 235, 236, and 202 elderly. During the next six-month period 20 projects were completed in the city and 9 were located elsewhere in the metropolitan area, showing some progress in dispersal. Between July and December 31, 1970, only 4 projects were started in the city while 12 new projects were located outside the city limits. The Baltimore metropolitan area is quite large, as shown in the small inset map.

WASHINGTON, D.C.

While the rate of construction of federally assisted projects has declined recently in the Washington, D.C. metropolitan area, the location of the projects has been directed to areas beyond the city's boundaries.

As of January 1, 1970, the map shows an equal distribution of projects within and outside of the city limits -- 21 projects each. During the next 6 months, 5 projects were started inside the city and 14 were located in other parts of the metropolitan area. Only 3 projects were started inside the city in the six-month period which runs from July to December 1970, as compared with 9 projects in surrounding areas.

I should point out, that many of the projects started in 1970 were processed and approved earlier, so we should show an even better distribution in 1971.

SAN DIEGO

San Diego shows a large amount of subsidized housing located outside the city boundaries in widely scattered parts of the metropolitan area. Only 8 projects were located in the city as of December 31, 1970; five existed prior to January 1, 1970 and three were added between July 1 and December 31, 1970. Prior to January 1, 1970, only three projects had been located outside the city. During the six-month period from January 1 to July 1, 1970, 25 projects were built in outlying parts of the metropolitan area. An additional 21 projects were completed and located in the remaining

portion of the SMSA, particularly to the east of the city.

SAN ANTONIO

Activity in the San Antonio area has been strong and the effect of the instructions given to the field office concerning the location of assisted housing projects can be seen. As of January 1, 1970, 42 projects were within city limits; only one project outside. In the next six months, 7 projects were started within the city limits, none outside. During the third period, 12 projects were started outside the city limits and 11 were started inside.

PITTSBURGH

The Pittsburgh metropolitan area contains a large volume of federally assisted housing. As of January 1, 1970, 33 projects had been started inside the city limits and approximately 50 projects were scattered throughout the remainder of the four-county metropolitan area. Construction activity decreased during the next six months when 17 projects were started within the city and 5 projects were located in the area immediately outside the city. During the six-month period ending December 31, 1970, 9 projects were started in Pittsburgh city, while 16 projects were begun in various parts of the SMSA.

A number of projects are clustered in the eastern and western sections of Pittsburgh inside the city limits. This shows the first results of Project Rehab, the Department's special effort to stimulate use of its assisted programs to finance the large scale rehabilitation of absentee-owned substandard housing. In Pittsburgh, HUD and a private organization created and financed by a large number of industrial firms have been cooperating aggressively to rehabilitate substandard housing on a volume basis using the Section 236 and rent supplement programs primarily. We think it is vital that federal housing assistance programs be used to rebuild slum areas at the same time they are being used to create housing opportunities for minorities outside of the center city. Both approaches, I am convinced, are fully consistent with our overriding objective of creating freedom of housing choice for all Americans.

JACKSONVILLE

Jacksonville, Florida, has demonstrated an effort to achieve a variety of locations for federally assisted housing.

A total of 19 projects had been started within city boundaries as of January 1, 1970, compared with 7 projects outside the city limits. During the next six months, twice as many projects (12) were built outside the city as within its boundaries. During the last 6 months of 1970, 4 projects were located in Jacksonville proper; 8 were located in other parts of Duval County.

These results have been achieved under the Department's informal policy, which was not reduced to writing. Now that the President has issued his statement, we are in a position to give more explicit policy guidance to our field personnel.

HUD's low-rent public housing program in rural America also helps moderate concentrations of subsidized poor in central cities by stemming the migration of low income persons to the already overburdened cities. The extent of HUD's programs in rural areas is not generally appreciated. During fiscal years 1968 through 1970, 122,000 single family homes were built in rural areas, representing about 9 percent of all HUD-FHA-insured home mortgages. One-sixth of all HUD-aided public housing has been provided to communities of under 10,000 population and one tenth to communities of under 5,000.

This map prepared by the Rural Housing Alliance constitutes another demonstration of the extent of HUD's programs in rural areas. Each pin represents one of the more than 3,000 local housing authorities in the nation. The large fraction of these pins located away from major cities shows that HUD's low-rent public housing program is not simply a big city program, but that it operates to house low income persons in rural areas so that they are not forced to move to central cities to find shelter.

For the future, we have developed project selection criteria for our major assisted housing programs. These criteria cover new, single-family subsidized housing under section 235 and multifamily, subsidized housing under section 236 of the National Housing Act, rent supplement projects, and low-rent public housing.

These proposed regulations were first published for public comment last June. Among the more than 80 comments we received were letters from civil rights groups, city governments, mortgage bankers and builders. Changes were made as a result of the comments and, because of the importance of these criteria, we republished them for further comment in

October. A copy of the October version accompanied HUD's answers to the recent questionnaire of this subcommittee. Again we have received many public comments, which reflect the importance of these criteria. Having thoroughly considered these comments, we expect to make the criteria final in the very near future.

The purpose of the Housing Project Selection Criteria is to identify those proposals which will best foster the goals and policies of our Federal housing programs. The criteria serve this function by eliminating those projects which are clearly unacceptable, and by establishing a priority ranking for funding acceptable projects.

There are seven criteria in the case of single family proposals and eight for multifamily housing; the eighth criterion relates to housing management. On each of these criteria, a project may receive a "superior", an "adequate" or a "poor" rating. A proposal which receives a "poor" rating on one criterion will not be funded. Proposals which receive no "poor" ratings are ranked according to the number of "superiors" and "adequates" they receive.

Several of these criteria relate directly to the achievement of equal housing opportunity for minority and low-income families. Criterion No. 1, Need for Lower Income Housing, seeks to assure that low income housing will be built only where it is needed. Criterion No. 2, Minority Housing Opportunities, favors projects which will not contribute to further minority concentration. Criterion No. 3, Improved Location for Lower Income Families, is designed to weigh the adequacy of community facilities or services and the availability of lower income job opportunities in the vicinity of a proposed project.

The remaining criteria deal with considerations which are also important in selecting which housing projects should be funded. Criterion No. 4, Relationship to Orderly Growth and Development, encourages proposals which are consistent with metropolitan and regional plans and eliminates those which are not. Criterion No. 5, Relationship of Proposed Project to Physical Environment, weighs the effects of housing proposals on their surrounding environment and, conversely, the impact of the environment upon the proposed project.

For example, proposals which would be located where excessive noise would adversely affect the residents will not pass this criterion.

Criterion No. 6, Ability to Perform, not only requires that the applicant have satisfactory ability to complete the project, but also that the applicant has complied in the past with equal opportunity guidelines and requirements. Criterion No. 7 gives special benefit to projects which show potential for creating minority employment and job opportunities. Finally, Criterion No. 8, Provision of Sound Housing Management, is designed to insure that federally assisted housing is well managed.

These criteria provide to our local HUD offices throughout the nation a uniform, institutionalized method of considering the impact of our assisted projects in the areas in which they are proposed to be built. In this respect, we believe we are in full compliance with the holding of the Third Circuit Court of Appeals in Shannon v. Romney. That Court held that:

". . . [HUD] must utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance with its duties under the 1964 and 1968 Civil Rights Acts."

The Department's new advertising and affirmative fair housing marketing programs are closely related to these housing project selection criteria. The existence of new low- and moderate-income housing outside areas of minority concentration is of no value to those who need it, if they are not aware that it is there and that it is available to them.

HUD is now in the final stages of issuing affirmative fair housing marketing regulations. When these become effective they will cover virtually all housing which receives FHA mortgage insurance: subdivisions, multifamily projects, mobile home courts and dwellings built by developers for sale wherever 5 or more units are involved. They will require applicants for our mortgage insurance to carry out an affirmative program to attract buyers or tenants of all races.

The regulations contemplate that these organizations shall recruit their personnel on a non-discriminatory basis and that their marketing programs will typically include advertising to minority persons through minority oriented publications. Another significant requirement is that HUD field offices will make available to interested persons and groups (including for example, minority brokers and fair housing organizations) upon request, every 30 days, lists of FHA subdivisions or projects on which FHA has issued commitments.

To fulfill our obligations under the "affirmative action" requirement of Title VIII of the 1968 Civil Rights Act and the President's equal opportunity policy, we issued on May 21 proposed guidelines for fair housing advertising in newspapers and on August 4 regulations which will require fair housing posters at real estate offices. We have already found that advertising of housing on a non-discriminatory basis has substantially increased. For example, as early as last August HUD's equal opportunity logo or slogan appeared in more than 90% of the single family housing advertising in the Dallas, Texas Times Herald.

The fair housing poster will advise not only that discrimination in housing is illegal, but that certain practices, such as block-busting and representing that a dwelling is rented when it is not, also constitute discrimination. The poster advises that fair housing complaints may be filed with HUD.

Now I realize that these proposed regulations will not help to achieve equal housing opportunity unless they are administered firmly and with a sympathetic understanding of their objectives. Therefore, I have personally explained them to over 700 key personnel from HUD's field offices. In the course of these meetings, I urged our people never to forget the vital necessity of administering all of these innovative measures in a way which will further genuine equality of housing opportunity in this country.

Turning now to the Department's community development grant programs, I want first to emphasize that we will continue to apply the law and this Administration's policies to the operation of these programs. This does not mean that under existing statutes we can apply a rigidly simplistic one-dimensional criterion to all program applications; however, it does mean that communities which actively pursue the expansion of housing opportunities have an advantage in the competition for limited program dollars.

In this connection, the President's statement set forth three important statutory mandates:

" -- As noted earlier, HUD may not make a grant under any of its programs if the recipient will discriminate or otherwise deny the benefits of the assisted activity or project to persons on account of race.

" -- Where the 'workable program' requirement -- imposed on local communities by the Housing Act of 1949, as amended in 1954, in connection with urban renewal and related programs -- is a condition of eligibility, HUD may not make a grant in the absence of a HUD-certified workable program for community improvement. The program must make reasonable provision for low-and moderate-income housing, which must of course be available on a nondiscriminatory basis.

a / " -- Where comprehensive planning is supported by a Federal grant under the 1954 Housing Act, as amended in 1968, the plan must include a 'housing element' to insure that 'the housing needs of both the region and the local communities studied in the planning will be adequately covered in terms of existing and prospective in-migrant population growth.' This provision has broad application, since such planning grants are often used to prepare the areawide plans which are a prerequisite for Federal financial assistance under the water and sewer, open space, and new communities programs." / a

The President declared his policy regarding grants for such community development programs:

"We will carry out programs in a way that will be as helpful as possible to communities which are receptive to the expansion of housing opportunities for all of our people."

To implement that policy with respect to water and sewer grants, and to select the best proposals for such assistance, we instituted on July 1, 1971 a project selection system whereby we award points not only for such fundamental factors as health and need, but also for endorsement or adoption by the local government of the goals of an areawide planning organization. Projects for areas including housing accessible on a nondiscriminatory basis to persons of low and moderate income are favored as well in this selection system.

Our recently published application procedures for other Community Development programs, such as Neighborhood Development and Neighborhood Facilities, award points to proposals from communities in which there has been a nondiscriminatory expansion of the supply of low and moderate income housing or which have a realistic plan to expand the supply of such housing outside low-income or minority areas.

HUD's responsibilities in helping to achieve equal opportunity in housing lie in two main areas: as an important aspect of financial assistance programs, which I have been discussing, and in enforcing laws aimed at barring racial

discrimination in housing to which I will now turn.

Title VIII specifically requires that HUD receive and process complaints of individuals who suffer discrimination in housing. The Department has worked to make it as easy to file a complaint as possible. A complainant may write his complaint in any form he wishes. He may even telephone it to HUD.

In calendar year 1970, the Department received 1,028 complaints. These have increased significantly this year. We have received 962 through the month of August. This chart shows how the number of complaints we have received has been generally increasing. The increases after June of this year in part reflect a pilot TV and radio campaign we have been running since June 1, 1971 to bring more forcefully to the attention of the public in five Middle Atlantic states and the District of Columbia the opportunity provided to get action on complaints of discrimination. As part of the campaign we have provided a toll-free telephone number which can be used to report complaints. Complaints in the region for July and August increased to 109, 187% more than in the same two months in the previous year. On November 1, the

program was expanded to all states east of the Mississippi. Soon we will implement it from coast to coast.

The next chart shows that the number of Title VIII complaints we attempt to conciliate, and the number we successfully conciliate, has also been increasing. The number we attempt to conciliate is below the number we receive primarily because HUD does not have jurisdiction over many complaints submitted to it. A successfully conciliated complaint is one in which the complainant and the person charged with discrimination come to an agreement on an appropriate remedy for the alleged discrimination.

An important aspect of our administration of this complaint procedure is that it frequently results in equal housing opportunities for countless persons who have not themselves sought our help. Settlements which result from a complaint often provide that the person or company accused of discrimination will advertise and market his housing affirmatively to reach minorities. Two or three large, multistate developers have entered into such settlements with this Department.

The complaint procedure has been a valuable information-gathering tool for HUD through which we can determine the need for regulations and guidelines. Our proposed Affirmative Fair

Housing Marketing Regulations, Fair Housing Poster Regulations, and Advertising Guidelines developed directly out of complaint processing experiences.

One of the most useful tools in working against discrimination is information on what groups take advantage of HUD programs. During the past year, the application forms for our housing programs have been changed so that they provide ethnic and racial data. We are in the process of developing computer systems which will help us analyze this data. When we have that capability, we will have a useful indication of whether our programs are being made available equally to all those who are eligible. We will also be able to measure the effectiveness of the many new procedures we are implementing to insure equal opportunity in housing. If they are not, we will take additional steps to remedy the situation.

In addition, HUD has entered into three contracts -- in Chicago, San Francisco, and Washington, D. C. -- to develop and test the most effective techniques for achieving an open housing market system. These efforts are intended to identify methods which can be duplicated in other metropolitan areas to increase housing opportunities for minority citizens by eliminating segregated dual real estate markets. A particularly

useful by-product of the work of the Chicago Leadership Council under HUD's contract is a soon-to-be-published handbook for lawyers who represent fair housing complaints.

Another educational effort is the looseleaf Equal Opportunity in Housing Law Reporter. HUD originated the idea for this service, which will review and report statutes, regulations, decisions and opinions in this rapidly developing field. This report should prove an invaluable tool to State Attorneys General, fair housing groups and many other interested parties to whom HUD is distributing it.

HUD has an important fair housing responsibility under Section 808(d) of the Civil Rights Act of 1968 which requires that all executive departments and agencies cooperate with the Secretary of HUD to administer their programs and activities relating to housing and urban development in a manner affirmatively to further fair housing.

Our work with other agencies has focused on those which we believe have the most impact on equal opportunity in housing. Foremost among them are the Federal financial regulatory agencies: The Federal Home Loan Bank Board, the Federal Reserve System, the Federal Deposit Insurance Corporation and the Comptroller of the Currency.

These agencies have distributed to lending institutions which they regulate 18,500 copies of a questionnaire prepared by HUD and designed to identify the practices of these institutions with respect to members of minority groups who seek loans from them. We are now studying the more than 17,000 responses received. To the extent that this study reveals patterns of discrimination, we anticipate corrective action by the supervisory agencies.

In June of this year GSA and HUD signed an agreement under which we jointly undertook to insure that the Federal Government as a major employer itself will fulfill its fair housing responsibilities under Section 808(d) of the 1968 Act.

Under the agreement, HUD will investigate and inform GSA of the availability of low- and moderate-income housing on a nondiscriminatory basis in the area of proposed Federal facilities. In the event that GSA has no reasonable alternative location to a site where the supply of low- and moderate-income housing on a nondiscriminatory basis is inadequate to meet the needs of the personnel of the agencies involved, the local community will develop, with the cooperation of GSA and HUD, a plan to assure an adequate supply of housing six months after the building or space is occupied.

These then are the highlights of our fair housing program. Frankly, in some areas such as investigations, we could do more, if Congress had not regularly cut the budget for HUD's Office of Equal Opportunity. We requested \$11,300,000 for fiscal 1971; Congress cut that nearly 30% to \$8,000,000. Our request for fiscal 1972 was \$9,254,000; Congress cut that 10% to \$8,250,000. We welcome the support of the members of this subcommittee in getting us the money we need to do better.

I believe that our execution of our fair housing responsibilities demonstrates that we are clearly and vigorously committed to a leadership role in equal opportunity in housing. There are those who would say that we are not doing enough. They would say that you cannot have too much pressure to impose their conception of what ought to be.

Now I have a profound commitment to what ought to be, but the real question is how to get things done to achieve what ought to be. I am totally convinced that those who are enthralled by the idea of sweeping Federal force run the risk of preventing not only what ought to be, but also what can be.

For example, if you wanted to block progress in the housing field in the years immediately ahead, you would try to

institute a national program that focused on the idea that you are going to force low and moderate income housing on every suburban community in this country; and every community which would not fall in line would be cut off from all Federal funds.

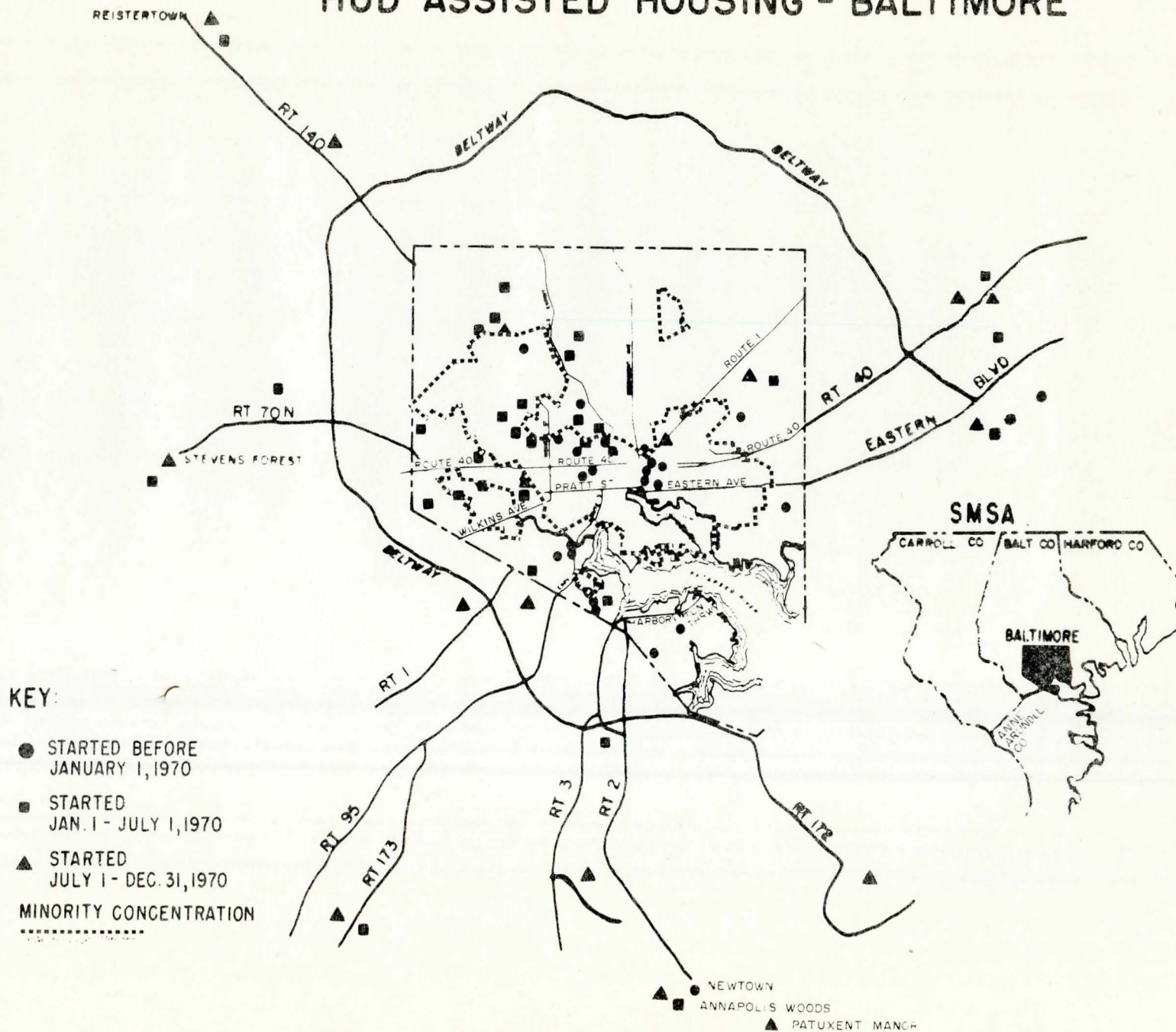
I am convinced that most Americans are receptive to the kind of affirmative action for equal housing opportunity embodied in our administration of HUD's programs. But I do not think the people of this country are ready to support the kind of forcible approach which some advocate. And Congress does not appear ready to support it either.

Many of our people -- yes, and members of Congress among them -- have too many unfounded fears and prejudices. They have to be shown how freedom of choice in housing can be accomplished in the right way.

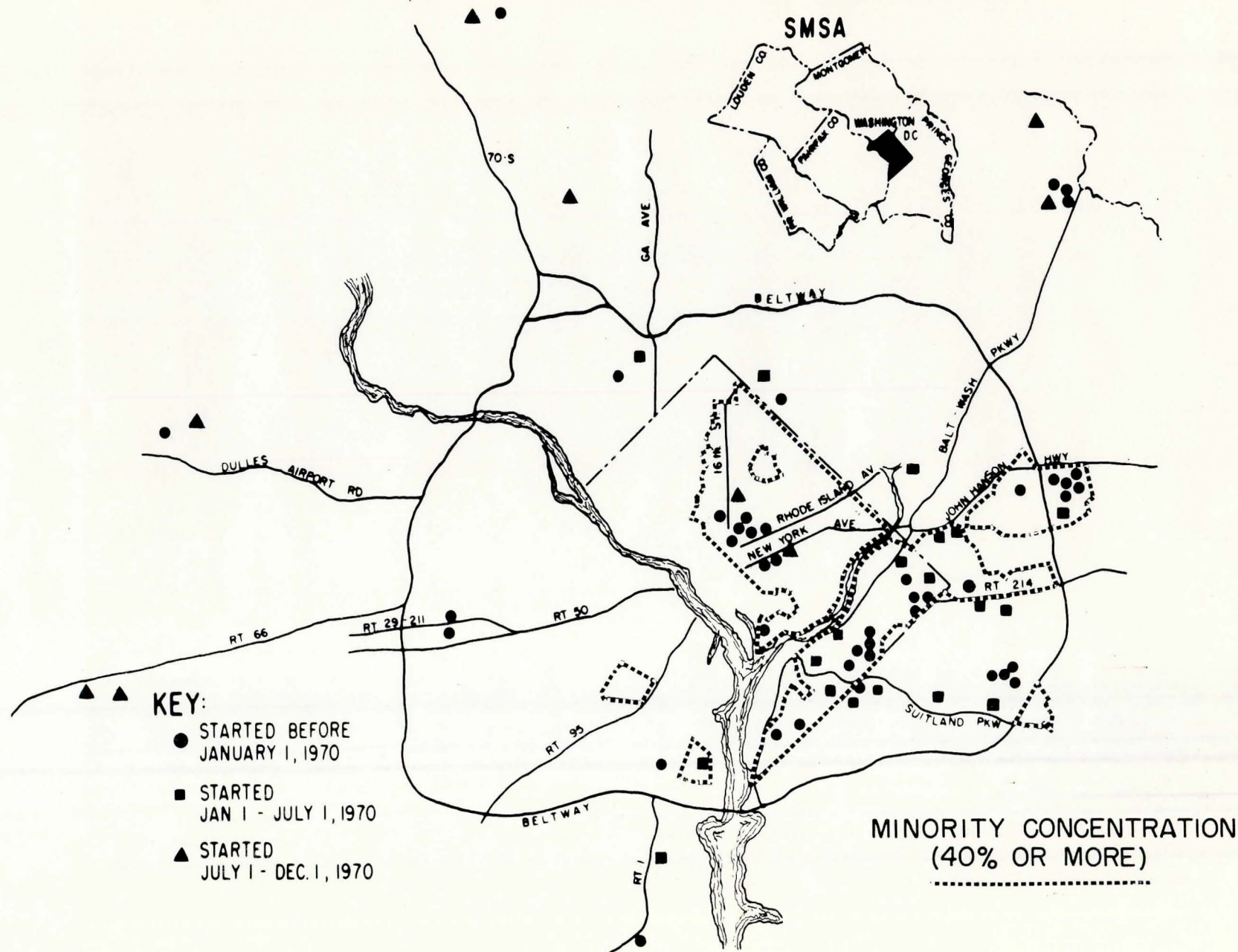
What we should support now are policies that will achieve all the progress it is possible to achieve at this time -- policies that will make maximum progress toward the day when every American is free to choose a decent home in a suitable living environment.

I believe that the President has enuciated such policies.
Our Department will continue to do our best to carry them out.

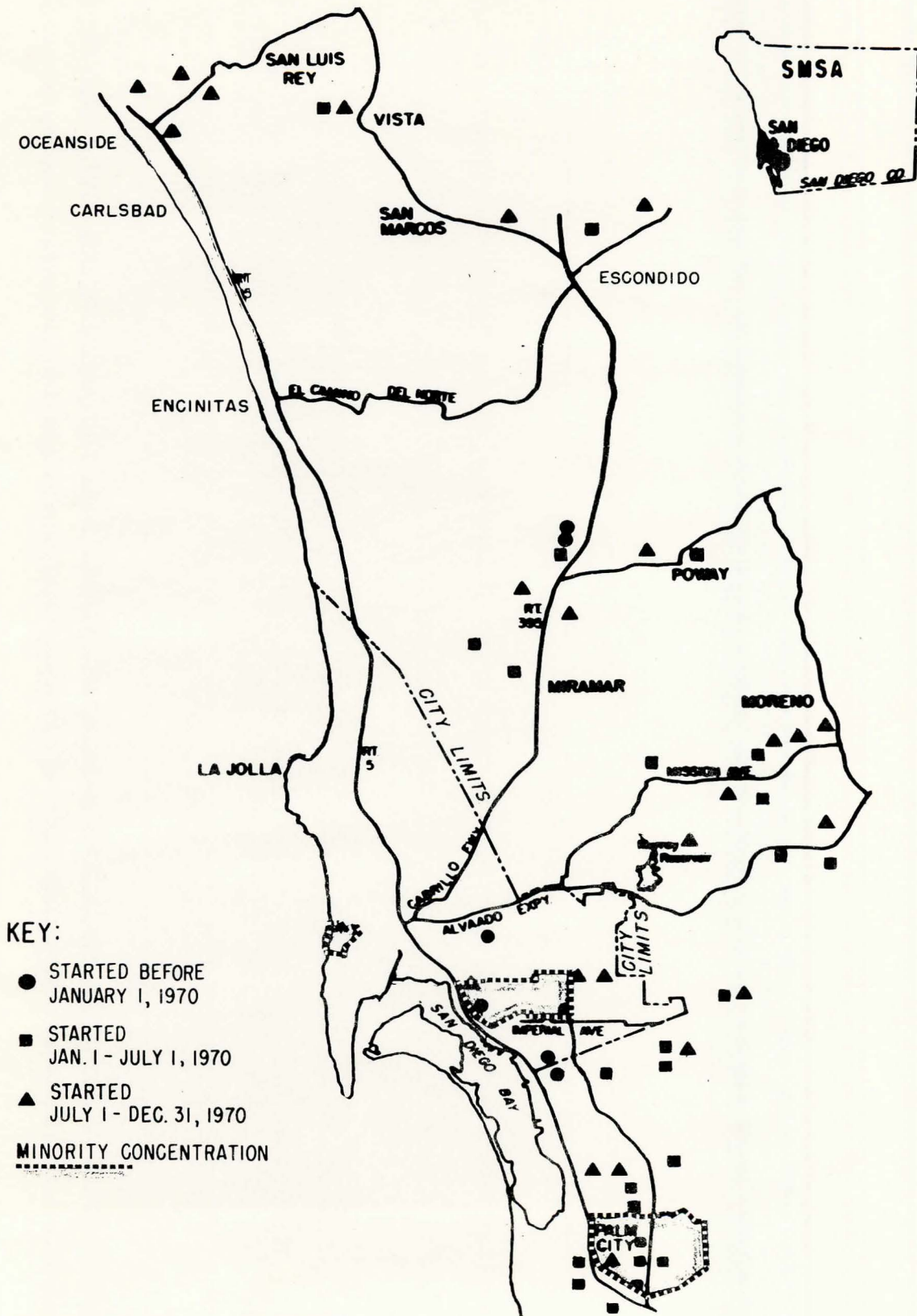
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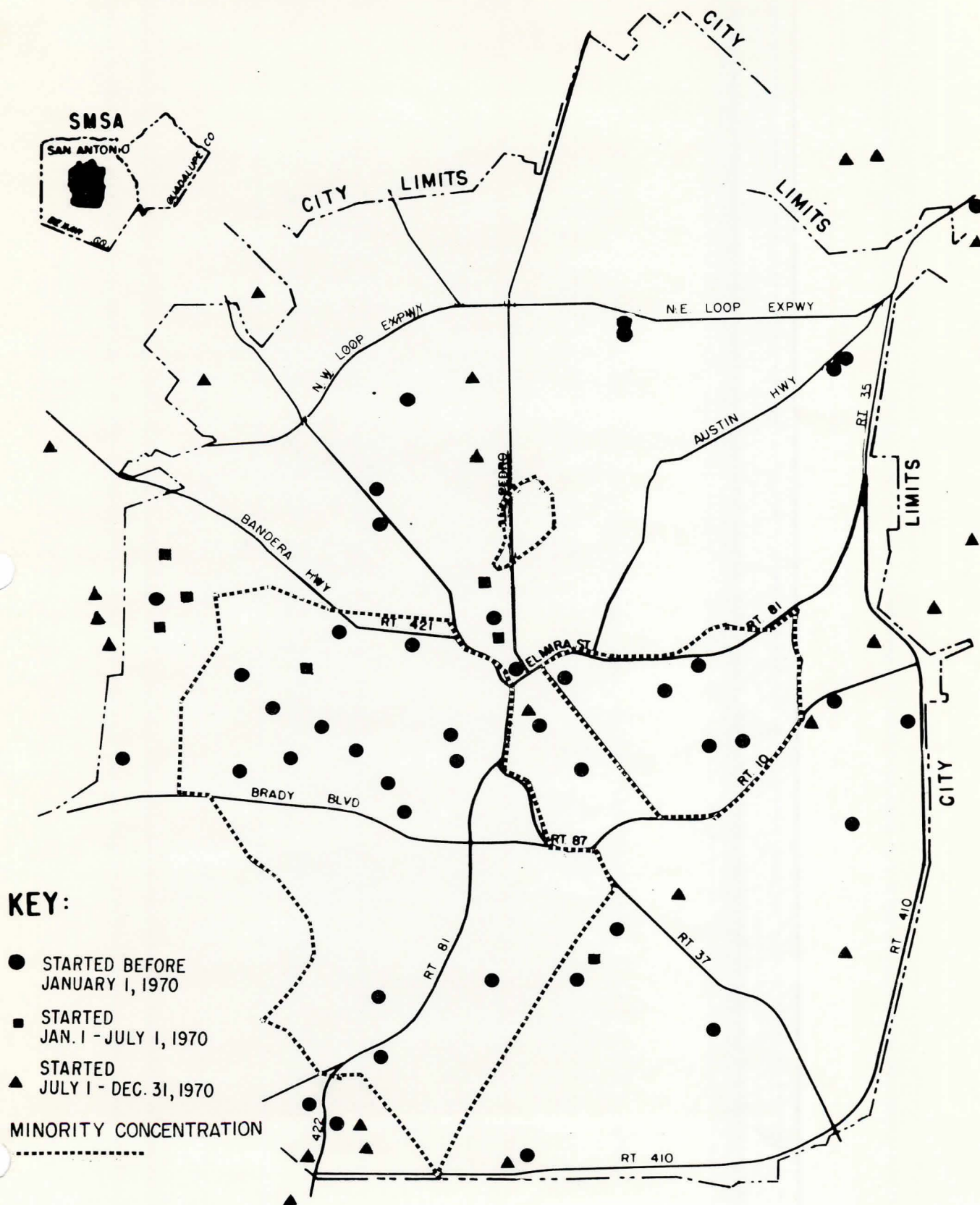
HUD ASSISTED HOUSING - WASHINGTON, D.C.



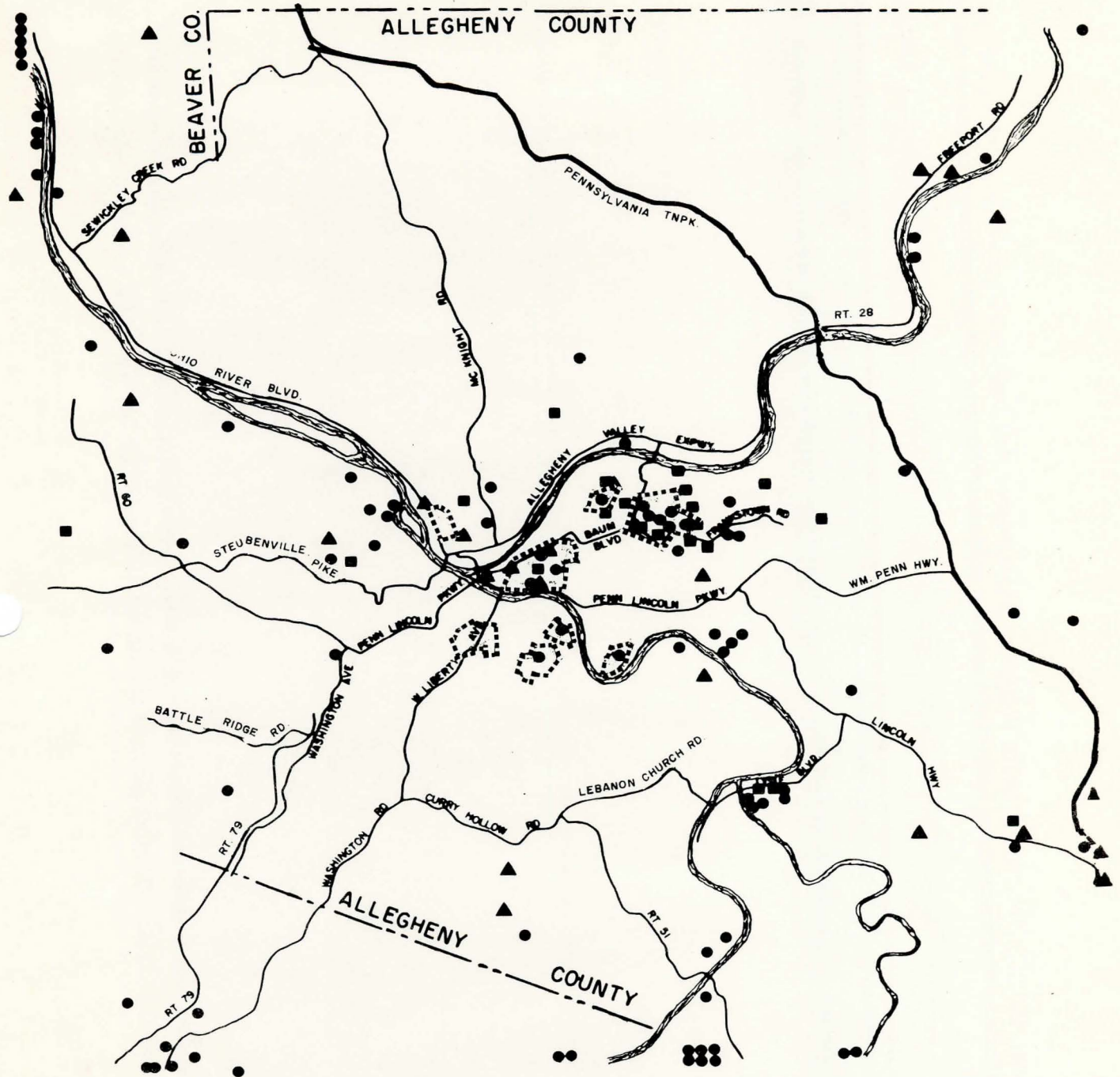
HUD ASSISTED HOUSING - SAN DIEGO



HUD ASSISTED HOUSING - SAN ANTONIO



HUD ASSISTED HOUSING - PITTSBURGH

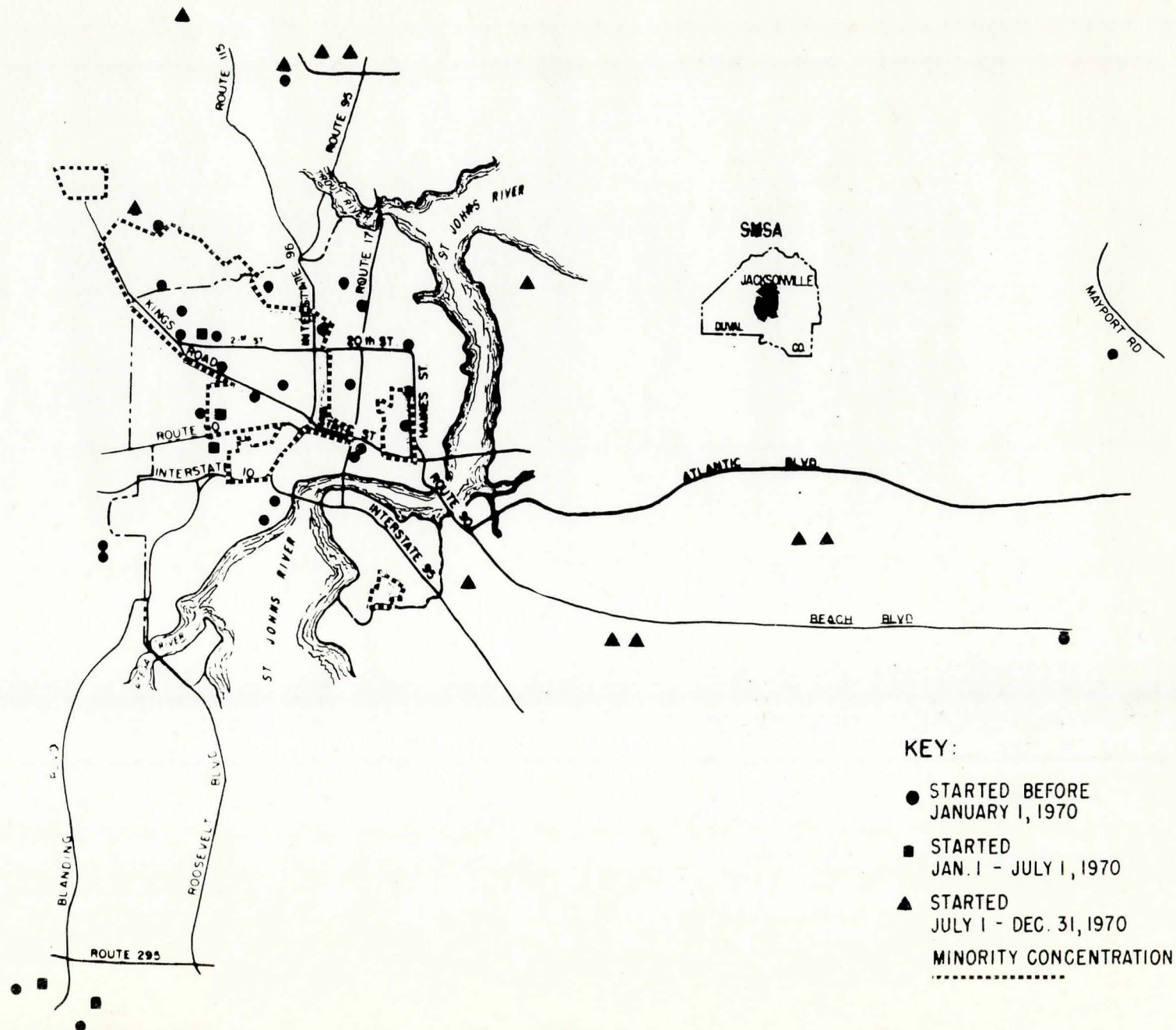


KEY:

- STARTED BEFORE JANUARY 1, 1970
- STARTED JAN. 1 - JULY 1, 1970
- ▲ STARTED JULY 1 - DEC. 31, 1970
- MINORITY CONCENTRATION



HUD ASSISTED HOUSING - JACKSONVILLE



TITLE VIII COMPLAINTS RECEIVED BY MONTH

