

LAND USE AND RURAL AMERICA^{1/}

I'm asked to comment on land use these days usually after a statement from the floor to wit:

"I'll be in favor of planning and land use control someday, but not yet. We don't have any need for it right now." Or an observation that, "Planning is controversial, and I don't like to get into arguments with my neighbors." Or--"This is supposed to be a free country. Don't let anyone tell you that you don't have a God-given right to do whatever you please with your own property."

Mark Twain, in his writings of 1896, "Life on the Mississippi," described LaSalle's explorations about 300 years ago as certain high privileges accorded him by Louis XIV of France. Chief among them was the privilege to explore, far and wide, build forts, stake out continents, and hand the same over to the King. LaSalle was to pay expenses, receiving in return, some advantages, among them the buffalo hide monopoly.

In early 1682, he arrived at the site of the future town of Napoleon, Arkansas, where Twain says, "the white and the red man struck hands and entertained each other. Then, to the admiration of the savages, LaSalle set up a cross with the arms of France on it, and took possession of the whole country for the King--the cool fashion of the time--while the priest piously consecrated the robbery with a hymn. The priest explained

^{1/} Material for talk by Norman A. Berg, Associate Administrator, Soil Conservation Service, USDA, at a meeting of the Economics Group Luncheon, USDA, March 4, 1974, Washington, D. C.

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the mysteries of the faith "by signs" for the saving of the savages; thus compensating them with possible possessions in heaven for the certain ones on earth which they had just been robbed of. "

"It is a most curious distinction, "Twain continues, "that France stole that vast country on that spot, "--the future Napoleon, Arkansas, and by and by Napoleon himself was to give the country back again (in 1803 for about 4 cents an acre) and make restitution, not to the owners, but to their American heirs.

When LaSalle by virtue of his human voice (inaudible a half mile) stood in the shadow of his confiscating cross on that day the realm of France received on parchment a stupendous accession. The fertile plains of Texas; the vast basin of the Mississippi, from its frozen northern springs to the sultry borders of the Gulf; from the woody ridges of the Alleghanies to the bare peaks of the Rocky Mountains--a region of savannas and forests, sun-cracked deserts and grassy prairies, watered by a thousand rivers.

The Yearbook of Agriculture, for 1958, "Land," describes in more detail how we acquired our landed estate--including the acquisitions, disposal, and management of the public domain.

Ownership is the important connecting link between man and the land. It is the ownership that fixes responsibility for the way the land is used. In its purest sense, ownership means complete dominion, title, or

proprietary right in a thing or claim. As we know it, however, ownership is a rather loose aggregation of human relationships that provides maximum, though limited, use and possession of property objects. Bloody forms of violence followed later by habits, precedent, and courts of law marked the dawn of civilized property rights. Now, with the intricacies of nearly 50 thousand years of experience with property, we have a complex system providing stability of possession and use of resources so necessary for our highly integrated economy. Special segments of law are devoted to the otherwise simple matter of where man may place his feet. The basic pattern of the U. S. land system, inherited from Europe (primarily from England) and influenced by the Jeffersonian view--was established by the Constitution and the North, West and Southwest Ordinances.

Senator Henry Jackson in partial recognition of this matter, said during the markup of S. 268 that the Committee on Interior and Insular Affairs gave careful consideration to the possible impact of the legislation on the traditional rights of private property owners. That Committee adopted an amendment to subsection 203 (f) in S. 268, The Land Use Policy and Planning Assistance Act, that reads:

"Nothing in this Act shall be construed as enhancing or diminishing the rights of owners of property as provided by the Constitution of the United States or the constitution of the State in which the property is located. "

Therefore, as we look at our past because the U. S. was endowed with vast and productive land resources the authority of government was applied to facilitate land development, stimulate individual land ownership, and create private rights in the public lands. The Federal laws relating to land shared a common purpose of placing into State and private hands the vast lands purchased and conquered as our Nation expanded westward. When landowners to whom these lands passed were seriously inconvenienced by a land use problem, their remedies lay with the judicial process and rights based on the common law doctrines of nuisance and trespass. For over two centuries, resources were then abundant and able to support the material needs, varied activities, and diverse interests of this Nation's growing population.

Recently, the increasing scarcity of relatively free, undeveloped land (an urban view of farming, grazing and forested areas), and the mounting pressures of industry, population and urbanization have generated a greater number of land use conflicts and resource allocation controversies.

The Senate Committee Report No. 93-197 for S. 268 cited that in all parts of the U. S. conflicting demands for limited land resources of certainty are placing severe strains upon economic, social, and political institutions and process and the natural environment--farmers groups oppose real estate developers; homeowners collide with highway planners; waterbased recreation interests are pitted against oil companies;

environmentalists fight the power, mining and timber interests; cities and counties question State actions and the suburb is at odds with the inner city.

At its most fundamental level, the management of land resources is a question of how best to resolve competing land uses. It is usually at the local level that the major issues of land use arise--and our ability to define the "National interest" is yet very weak.

In the limited time at this hour, I'll briefly develop background for possible discussion in three broad arenas.

First, Restraining the quantity of growth as a means of enhancing the quality of life. The "taking issue" --this emotionally charged topic of "no growth--or slow growth" includes several instruments to carry out the strategy, i. e. stringent pollution control, limited supply and access to public services, tax penalties--and land use controls. Environmentally-motivated advocates of zero population growth are eager to retain currently "undeveloped land" in its "natural condition."

Several recent State--and local actions--have imposed new regulations on land use--including some shift upward in the level of regulation. The meaning of "property rights" is a key point because the control of land use to attain environmental goals assumes that land contains an element of common property "owned" by the public at large--and that the use of this component has precedence over private use. This is the "taking issue"

described in the CEQ paper at length. There does appear to be--in urban centers--a growing public acceptance--that regulation without compensation is permissible even when land value is almost extinguished.

Second, Another set of issues has come to be known as "areas of critical environmental concern." Usually these include:

- historic and ecologically fragile areas
- lands subject to flooding and other natural disasters, and
- regionally significant agricultural and watershed lands.

These renewable resource lands are of special interest to us for we should be their chief proponent for wise use.

These include lands usable for water, food and fiber production.

It is here the "prime" land debate will focus--i. e., the preservation of open space through preferential tax assessment of agricultural land now used by about half the States.

Other arrangements are underway--New Jersey plan.

Some want land at the urban fringe kept in permanent open space status--this does include some farmers--but others can well infer that the agricultural interests want low property taxes--only until it is attractive to convert from farm to urban use. This is the land owners best retirement plan to date!

Third, the Federal response to land use issues is still developing on several fronts:

SUMMARY OF LAND USE LEGISLATION

CONGRESS--

S. 268 - Land Use Policy and Planning Assistance Act. Passed Senate June '73.

What States must do to qualify - Within three years must develop a process which includes setting up an agency, doing appropriate research on land use problems, and developing regulations to control large subdivisions (50 or more units) outside of Standard Metropolitan Statistical Areas.

Within five years, must develop methods to:

1. Control land use in "areas of critical environmental concern." This includes historic and ecologically fragile areas, lands subject to flooding and other natural disasters and regionally significant agricultural and watershed lands.
2. Control use of land impacted by "Key facilities" such as airports, highway interchanges, recreation areas, and energy facilities.
3. Control "large scale development" of more than local significance.
4. Assure that local regulations do not arbitrarily exclude development of public facilities, housing or utilities of regional benefit.

Federal Review - Federal judgment of State actions is limited to procedural grounds, i. e., whether a State can or does regulate the specified areas and activities, not the details of the State regulations. The only exception to this is that States must include among the areas of critical environmental concern, such areas which are of "more than statewide significance" and of "national interest."

Role of local government - Methods of State land use regulation shall wherever possible encourage the employment of land use controls by local governments, subject to State review. Participation by local government officials in developing and implementing the State land use program is required. State must have an advisory council composed of chief elected officials of local government.

Assistance offered - Annual grants to States, covering 90 percent of cost of developing a State land use program; followed by annual grants at 2/3 of cost of administration of the program to be administered by the U. S. Department of the Interior.

H. R. 10294 - House Interior and Insular Affairs Committee reported a bill February 13, 1974 by a 26-11 vote.

The proposal is very similar to the Senate version. The key differences being:

1. House does not require regulation of large subdivisions as the Senate does.
2. House does not make Indian Tribes eligible to participate, as the Senate does.
3. House gives States two years longer than Senate to develop the planning process.

Both agree on same level of funding \$100 million per year.

Budget proposal for FY 75 is \$41 million.

The House Rules Committee (9-4) postponed House consideration of H. R. 10294 on February 26.

The approval by the ^{Interior} Committee was couched in such a way as to allow Representative Udall to offer an amendment on the House floor to include sanctions against States that don't develop land use programs. However, neither Udall nor anyone else expects sanctions to be approved.

Effect on existing laws - Power to control land use is in hands of States under the Constitution. States participating in this program must exercise some of these powers. Act does not "require or prohibit" State action which would require compensation from the State to a private property owner under the Constitution. Act specifies that nothing herein shall be construed as enhancing or diminishing the rights of owners of property as provided by the U. S. Constitution or the constitution of any State in which the property is located. Planning and management activities on Federal lands are to be coordinated with State and local plans unless "paramount national policies, programs, and interest" are at stake.

For most of us, the question is not do we need a land policy--
rather--what will be the kind of policy to favor and adopt?

You may not have as much choice about National policy (but there
is still time for even this--House action--as you will about
the State policy.

Several alternatives:

Hawaii--Centralized State planning and control

Florida & Utah--State guidelines and responsibility for certain
defined critical areas

Michigan--A more relaxed status quo system with major
responsibility at the local level.

Above all--the flexibility in the National proposal suggests the
opportunity in each State to develop policy that will fit your State and your
situation--something you can live with, to help make and keep your
State a pleasant place in which to work and live.

In 1972 Congress did enact the Coastal Zone Management Act to provide Federal help to 30 States to develop a management program for the coastline along the Great Lakes, the oceans and the Gulf under the Department of Commerce direction. More than half of the U. S. citizens now live within 50 miles of those areas.

**USDA COMMITTEE ON PLANNING AND POLICY FOR
LAND USE AND LAND CONSERVATION**

The Committee was established as directed in Secretary's Memorandum No. 1807, March 26, 1973. The Committee, under the direction of Chairman T. K. Cowden was organized into six subgroups that are closely identified with the functions assigned to the Committee. Each subgroup was given specific objectives carefully designed to effectively focus on the work of the Committee.

The activities of the subgroups are as follows:

Legislation - Chairman - Thomas C. Nelson

The legislation subgroup is charged with keeping the Committee informed of the status and needs of land use legislation, Federal, and State.

A report on sources of information in Washington, D. C. on "State Land Use Planning Legislation" has been completed.

Policy - Chairman - Norman A. Berg

The policy subgroup charge is to develop land use policies and make recommendations to the Committee for its consideration.

Secretary's Memorandum No. 1827: Statement on Land Use Policy was developed, approved, and released on 10/26/73.

Basic Data and Research - Chairman - Melvin L. Cotner

This subgroup is charged with maintaining a knowledge of basic data and research needed in land use planning.

A report for use by USDA agencies on "Research and Data Needs for Land Use Planning" has been completed.

An update of USDA's "Land and Water Resources--a Policy Guide" was accelerated. This publication is now in final review in ERS.

Interagency Relationships - Chairman - William B. Davey

This subgroup is charged with making recommendations to assure Inter-agency coordination and to employ USDA interdiscipline approaches to State and local planning.

A Land Use Policy Questionnaire was sent by Assistant Secretary Erwin to all State Rural Development Committees. The returns, from 46 of the 52 committees, have been summarized and evaluated.

Program Services and Activities - Chairman - Einer L. Roget

The charge of this subgroup is to prepare a brochure directed toward informing citizens and citizen leaders of USDA's role in land use planning and implementation. The subgroup will further be responsible for developing recommendations to assure that this information becomes available to citizens at the local level.

The brochure on USDA Land Use Planning Assistance has been published and arrangements have been made for distribution.

Education and Information - Chairman - John S. Bottum

This subgroup is concerned with educational efforts relating to land use policy and ways of providing this information and educational assistance to citizens through USDA's delivery system.

Training programs and information aids dealing with land use planning are to be made available to USDA agencies' field people as soon as possible.

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