

NATIONAL LEGISLATION ON LAND USE POLICY
AND AID TO STATES FOR LAND USE PLANNING

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 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^{Ark.} 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.

Material for talk by Norman A. Berg, Associate Administrator, Soil Conservation Service, at a meeting of the Great Plains Agricultural Council, Manhattan, Kansas, July 27, 1973.

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.

The landed estate of the American people is the resource base on which the American economy functions. The national domain is all land, public and private. The public domain is the remaining portion of the lands originally acquired by our Government. How we got our land is the core of our history. Basic Land-Title Records of all the United States (not included in the Thirteen Original States and Texas) are maintained in the Bureau of Land Management. These records are voluminous and complicated because title to the surface estate or land itself is often separated from the mineral estate.

"TR Telling Issue"

Ownership is the important connecting link between man and the land. It is 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. *And as a side*

Senator Henry Jackson *partial* in recognition of this matter, said that during the markup of S. 268 *that* the Committee *on Int & Ins Affairs* gave careful consideration to the possible impact of the legislation on the traditional rights of private property owners. The 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."

as we look at our past
Therefore, because the U. S. was endowed with vast and productive

This may not be in harmony w/ the leg. intent

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 certain types} 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; water-based 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.

We recognize that a title, a lease, or a mortgage manifests not an inherent right of an individual, but an inclination of mankind for orderliness. Society transcends individual property interests by expressing itself through courts of justice, custom, and economic forces. All interests in land, therefore, are in reality held at the sufferance of society.

The ways used by society to further influence land use includes:

1. Public ownership or control--One third of the Nation is Federal land and one sixth State and local public land, dedicated to forests, grasslands, wildlife, parks, recreation, wilderness, transportation, communications, national defense, waste disposal, and other service type functions. (*Eminent domain*)

2. Tax policy--The appraisal, assessment, and rate of property tax determines not only the local tax base--based primarily on local revenue needs--but the rights of private property owners. A few states are now trying "Agricultural Districts" in an effort to maintain significant agriculture or open land use patterns. The Senate bill (S. 268) (Land Use Policy and Planning Assistance) which passed the U. S. Senate on 6/21/73) would require a two-year study of:

- the tax revenue effects of all major public programs and activities, and
- the impacts, environmental, social, and economic, of various local property tax assessment practices and other Federal, State, and local tax practices.

3. Public programs--A variety of actions, i. e., planning and zoning, water and sewers, public housing, transportation, conservation, flood control, watershed protection, educational facilities, recreation, urban renewal, crop *needs & ac.* allotments, and many other programs definitely shape the use of land. *now!*

4. Regulatory rules, guidelines, and enforcement--Increasingly, the police power of the respective States, as an inherent power of government to take such actions as are necessary and constitutionally permissible to protect public health, safety, and welfare, is being used to control land use. Approval authorities, permits, grants, and other incentive methods contained in the Clean Air and Water Quality Acts clearly mandates those concerned with Environmental Quality to develop areawide waste treatment management plans. These must include means to control land use such as surface mining, and non-point sources of pollution. Basin planning, land use, and transportation control, and the Clean Lakes Program will, when fully implemented to deal with air and water quality, have significant implications for land use.

However, we are reminded that some of those in this room have been down this road a time or two already. *Dr. A. D. Weber*

"are lessons of the 30's put missed in the 70's?"
It was a poor job of matching land use to the suitability of the land

resource that partially led to the creation of the Great Plains Agricultural Council and several other agencies including the Soil Conservation Service.

Since then, whether it's an individual conservation practice under REAP ^{ACP} or the Great Plains Conservation Program, or aid to county or State government in setting guidelines and regulations, USDA has a long history of helping decide and improve land use.

It was evident as early as 1930 that on privately owned land, particularly farms and ranches, there were pervasive problems--social, economic, and environmental problems that threatened the welfare of farms and entire communities. A 1931 National Conference on Land Utilization called attention to overproduction, taxation and credit difficulties, lack of rural job opportunities, massive soil erosion on farm acres that were ill suited for the purpose; and others. The conference called for land-use policy to guide future development, ^{look to} a Federal program of soil conservation; and other actions.

Less than two years later the Soil Erosion Service was established in the Department of the Interior, with Dr. Hugh Hammond Bennett as its first Chief. In 1935 Congress transferred the agency to USDA and named it the Soil Conservation Service. Since then it has become one of the most broadly active Land and Water Use agencies in the Federal government.

As Assistant Secretary for Conservation, Research, and Education, Robert W. Long said on May 30, 1973:

"The Department of Agriculture today has ^{at least} a three-fold interest in land use policy:

"First, USDA manages nearly 190 million acres of land in National Forests and National Grasslands. These public lands are managed in a way to blend with the patterns of use and community objectives on the private lands with which they interlace.

"Second, USDA helps millions of private citizens, organizations, and government agencies conserve and manage their natural resources. An early policy decision of the Soil Conservation Service was that land improvement and changes in private rural land use would come about with greater assurance through a program of assisting land users and local units of government to meet their aims, rather than through imposing Federal standards or requirements. Most people more readily accept decisions when they help make them.

"...by the end of fiscal year 1972, more than 2.2 million land users were cooperating with more than 3,000 local conservation districts. Their conservation plans cover nearly 600 million acres.

"USDA agencies and local districts also have been active in special efforts such as the Great Plains Conservation Program; watershed protection and flood prevention projects; and resource conservation and development projects. These actions have had a major effect on land use patterns, " particularly in the Great Plains.

"Finally, USDA studies land use patterns and trends and natural resource conditions to aid all who have an interest in the land resource. SCS and cooperating agencies have mapped soils information on more than 815 million acres to provide useful data and interpretations for land-use planning and conservation treatment. The National Inventory of Soil and Water Conservation Needs made by USDA shows that more than three-fifths of America's private land is not being cared for to the degree ^{soil & water} conservationists feel is necessary to protect the soil for sustained use. This inventory and other data ^{now} are being incorporated into a comprehensive land inventorying and monitoring program for USDA. The Economic Research Service is engaged in a variety of studies involving land and people and dollars and how they mesh."

In all of these actions we have worked closely with the land-grant *univ.* colleges, and we've had a mutual interest and involvement in land use policy issues.

The subject of national land use policy came to the forefront again in 1970 with the introduction of legislation at the U. S. Congress. For three successive Congresses, Committees have been considering bills suggested by various legislators or by the Administration. Last month the Senate passed S. 268 by a 64-21 vote.

The bill declares a national interest in "a more efficient system of land use planning and decision-making," and would offer grants, administered by the Department of the Interior, to States for developing and implementing land-use-planning programs.

The Senate in their debate on S. 268 suggested that unless our land use decision making processes are vastly improved at all levels of government the Nation will be faced with a truly national land use crisis.)

Arguments on all sides apparently decided that with a few exceptions, the land use planning and management institutions of the past have left a legacy of uncoordinated, haphazard, inefficient land use patterns--often not reflecting the legal interests of various and increasingly diverse clients.

Congress reviewed the history of land use and what S. 268 does
and does not do. They listed 23 points. They stressed that:

- The power to plan and to regulate land use derives from the police powers of individual States, *because*
 - The Federal government has no police power to regulate lands within a State which are privately owned or owned by the State.
 - The Federal government does have police power as well as express Constitutional authority to regulate the use of public lands.
 - The States have long exercised land use controls--but in the early 20th century the States adopted model State laws generally delegating zoning authority--based on local land use plans--to counties, cities, and other units of local government.
 - Today, as we note land use questions of regional and National significance increasingly in litigation; i. e., power plant siting, certain heavy industry locations, trans-Alaska pipeline, etc. the traditional land use planning and zoning designed to deal with problems of a purely local nature appear to be inadequate.
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--Although traditional zoning concepts--and practices leave a great deal of room for improvement, National legislation encourages a continual "process of planning" wherein the right of local government to exercise land use powers is reasserted.

--State government is to be asked to join in partnership with local governments on those land use decisions of more than local concern. The States are, however, to assist the "locals" with guidelines for local planning or through cooperative planning only on those land use questions of more than local concern. This will take considerable definition. These probably will include land use decisions concerning highways, airports, mass transit systems, power plants and transmission corridors, areas to be preserved or closely regulated (environmental areas, flood plains, coastal zones) and areas for intense development (housing). Although "Federal Planning" or "Federal Zoning" is not mandated, required or allowed, nor is State zoning nor a master plan mandated, the proposed legislation does require States to exercise "States rights" and State responsibility over those land use planning and policy decisions of "more than local concern."

--It does require State governments to develop a process of planning and a State land use program which is "balanced. " This is defined as "a program that protects the environment and assures recreational opportunity, but at the same time provides for necessary social services and essential economic activities--for transportation, reliable energy systems, housing and residential development."

--It is the intention to provide States with wide latitude as to the methods determined as needed to implement new National Land Use legislation. But again there is to be a reassertion of all local land use powers with State administrative review under State guidelines. Senator Henry Jackson, Chairman of the Interior and Insular Affairs Committee, said, "If the States had been able to do the job in this area, we would not have any Federal legislation pending. "

"This is an effort to provide appropriate inducement and encouragement to the States, in effect, to exercise what has always been their constitutional right under the police power of the States. "

The proposed Act stipulates that the States must address (in their Land Use Program) five categories defined as "areas and uses of more than local concern." They are:

First, areas of critical environmental concern to assure that use and development will not substantially impair the historic, cultural, scientific, or esthetic values or natural systems or processes within fragile or historic lands, that loss or reduction of long range continuity and the concomitant endangering of future water, food, and fiber requirements within renewable resource lands are minimized or eliminated and that unreasonable dangers to life and property within natural hazard lands are minimized or eliminated.

Second, key facilities, to assure that major airports, highway interchanges and frontage access highways, recreational facilities, electric power activities, all have some control exercised over the use of land impacted by the location or access to, including site location, of such facilities.

Third, large scale developments such as industrial parks or major subdivision_n.

Fourth, public facilities or utilities of regional benefit such as solid waste disposal or sewage systems, and

Fifth, land sales or development projects such as major recreational or second homesite development in rural areas. This is a new feature. *Cite*

Nebr. Act (25 homes)

The bill requires that to be eligible for a grant during the first three fiscal years following enactment of the bill, a State must show it would use the funds to develop a statewide land use planning process, (14) and that a condition of continued eligibility after the three fiscal year period would be the State's development of a land use planning process, which would include:

1. Creation of a State Land Use Planning Agency, to be advised by an intergovernmental advisory council composed of representatives of local governments.
2. An inventory of the State's land and natural resources.
3. Compilation of information concerning the State's population, economy, environmental characteristics and projections of growth and land needs.
4. An inventory of public and private resources available for land use planning.
5. An inventory of the environmental, geological and physical conditions of the State's land.

6. Participation of land users, property owners, and the public in the land use planning process. (who-why-)
7. Consideration of the impact of a State land use program on the local property tax base and rights of private property owners.
8. Establishment of a program to regulate land sales or development projects to assure they are in conformity with the land use program.

Good N^o Rural Dev. Act of '72

Provision for public hearings, exchange of information and data among agencies and the public, training programs, and other communication efforts would also need to be included. Federal projects and activities that influence land use, such as water and sewer system aid, would need to be consistent with State land use programs.

An Interagency Advisory Board on Land Use Policy would be established, drawing its members from several Federal Departments, including USDA.

If a State did not progress fast enough toward developing a State land use program after three to five years, it might lose its eligibility for grants under the law. Earlier versions of the legislation would have withdrawn other kinds of grants as well.

Many other bills under discussion at the Congress relate closely to land-use policy--among them bills to review public lands policy; allow use of highway trust funds for mass rapid transit systems; study sites for power plant facilities; develop land bank programs; regulate surface mining; regulate highway development to protect natural beauty but aid rural development; set up land and water inventories; provide land-use tax incentives; regulate off-shore construction such as for electric power generation; provide public access to beach areas; protect undeveloped islands; and several others.

In summary, we need to understand what the land use legislation is all about. First, they are talking about land use control at the State level--not just "Planning," or "Coordination," or "Information Gathering." The purpose is to put teeth in the State land use planning process--not just call for more plans, but better planning and decision making.

Second, the emphasis is on certain significant land use issues that have regional impact, such as the protection of critical environmental areas, the control of some growth inducing key facilities, the control of large scale development, and assuring development of regional benefit.

And, third, the legislation deals with the role of the States. The approach is not to shift authority over land use to the Federal Government, or even to remove small units of local government from the majority of public decisions over land use. It is rather to encourage the States to establish a process for identifying and controlling those major land use decisions that require a broader review than that provided solely by the current, fragmented approval process at the local level. As long as the necessary processes are established, the Federal Government will not attempt to second-guess the land use decisions that result.

Because of the close relationship between land-use policy questions and USDA objectives, we are looking at the whole subject very closely. The Secretary established a USDA Committee on Planning and Policy for Land Use and Land Conservation, chaired by Dr. Tom Cowden. It will focus on policy and legislation strategies, basic data, and research, program coordination, education and information, and program review--and a subgroup has been set up for each of these focal points.

The Committee will help define the role USDA and rural America should have in proposed legislation, including our involvement in the proposed Interagency Advisory Board on Land Use Policy. It will help prepare for the review of State land-use planning programs.

The Committee will assemble the policy positions of USDA concerning the use, conservation and development of land and water resources. Further, it will assess how well USDA programs meet our objectives in the land-use arena, and suggest ways we can give better help to local people in preparing to fully meet their responsibilities in land-use planning.

The Committee also will set forth major land and water policy problems, and summarize and interpret information about them relating to Department programs. In all of its activities the Committee will give close attention to conservation and best use of productive farmland, protection and enhancement of environmental quality in rural areas, and achievement of rural development objectives.

Each of the subgroups has met several times already. I think the members drawn from 8 agencies in USDA will be able to help blend agency ideas into a unified Departmental thrust. They will help make sense out of land-use issues and how USDA should relate to them. I chair the subgroup on policy. We are to come up with policy recommendations for use of natural resource information in planning; protection of prime and unique farmland, recreation and wildlife areas; use of desert, alpine, and tundra landscapes; and use of flood plains, wetlands, and unstable soils areas.

I'm also a member of the program services and activities subgroup that is working to assess how USDA and other Federal land use programs impact on each other and to recommend ways to assure that information is readily available at the local level.

through our wide spread delivery system
I think that every Federal department, every land-grant university, every governmental unit and every interested private organization ought to similarly take a reading on what's coming, what's wanted, and what's needed. There will be national legislation. It will call for heavy State and local involvement. The staff assistance needed to meet these demands will be substantial, perhaps beyond the resources of many individual counties and towns. Substate planning regions, composed of several counties, each, may well provide the financial and staff resources required for data collection, storage, and retrieval, cartographic functions, and extension and publication activities.

Farmers and ranchers will be involved, too. All of us need to assess whether we're ready. All of us need to get informed and help others in conservation districts, state boards, or commissions, and other groups understand what's going on.

All of us need to think about the question of public control over use of private lands. As Assistant Secretary Long said,