

Should Private Lands Be Regulated--LAND USE or No
LAND USE

Several years ago, I served on a panel--LAND USE-Persuasion or Regulation. It provided a typical point-counterpoint opportunity for those who practiced the voluntary, laissez-faire approach to debate those advocating more and stricter control over decisions about land use. I had the least exciting charge to represent the best of both worlds as the only solution. I didn't pull very many advocates from their view to the desirable mix that may be most practical.

It is entirely possible this may end up being a repeat performance with different actors. At least the stage is set.

I am pleased to represent the Department of Agriculture and to that extent, the United States in opening your discussions.

"Land Use" or "Planning" or "Regulation" touched off a volley of words and conflicts as well as quiet questions. Land use issues have received considerable attention throughout the 1970's, at town halls, legislatures, agency offices, courts, and kitchen tables.

Many of the heated discussions about land use have resulted from a misunderstanding of definition, intent, effect, or applicability of a policy or a land-use change. Others have resulted because people have not heard of enough alternative solutions to

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land use questions. These barriers to effective public and private decisions are precisely the need for and the value of conferences such as yours. You can help fashion laws and government programs that fairly blend private rights and responsibilities with public needs. As one symposium proceedings suggest, the land use choices are tough in today's world. Land use is a changing and challenging area of law.

It is also still a valid approach that the Federal Government cannot pre-empt state and local governments in land use planning and control of nonfederal lands.

However, at every level of government, executive leadership should represent the sense of balance and judgment necessary to achieve order among many competing objectives. It does require a critical understanding of difficult tradeoffs.

I find it interesting that your program recognizes land use as an environmental topic and one that relates closely to rural development and to energy concerns.

This year USDA has held several regional workshops for its key field employees. The topics have been Land Use, Rural Development, and Energy. The more than 600 state agency USDA leaders who have discussed these issues have gained--perhaps for the first time--an appreciation of how policies on these topics are interrelated, and where they often have been in conflict. I am glad that you, too, are considering these topics together. They need to be complementary if the aims of each are to be met.

USDA recognizes that by far the majority of choices in the use of America's land resource are private, local choices--and we would just as soon they stay that way.

I'm not going to take you back several centuries to again look at the origins of our concept of land ownership. Anglo-American history records the gradual accumulation of individual rights in land. Over time, most of the land in Britain and the majority in the United States was converted to "fee simple" title or some variant of what has often been described as a "bundle of rights."

This is not to say that government has little or no influence over land use. To the contrary:

First, the ultimate in control is public ownership and Federal, state, and local land ownership is now 42 percent. For most of the time after the U. S. gained its independence and expanded its territory immensely, the dominant political philosophy was to dispose of the public land to settlers. Private ownership is now 58 percent of the Nation's total of 2.3 billion acres of land but the latest Government figures show the supply of private land is shrinking. In just 15 years, from 1959 to 1974, a total of 17 million acres was transferred from private ownership. That is a loss equal to the combined areas of three states--Delaware, Rhode Island, and West Virginia.

Virtually all of that land was taken by state and local governments, which have been acquiring property at the rate of 1 million acres per year. They have increased the amount of their holdings in the 15-year period by 12.4 percent.

The Federal Government's land holdings, on the other hand, have changed very little in recent years.

It is a trend of potential significance for the future of a Nation such as the U. S., with an economy that is based on private ownership.

The Federal Government owns about one third of all the land area in the United States. Local and state governments own a small but growing share, 6 percent. A little more than 2 percent is held in trust for Indians.

That leaves under private ownership 58 percent of the Nation's total of 2.3 billion acres of land. And that percentage has been declining, slowly but steadily, for decades.

What was done with the private land acquired by governments?

Much of it went into public parks and refuges for wildlife. Some was used for airports, highways, public buildings or streets to meet demands of the Nation's growing population in urban areas.

The amount of land classified as rural is declining steadily, at a rate of 1.1 million acres annually. Much of this loss is attributed directly to urban growth. In one five-year period 4.6 million acres--an area about the size of New Jersey--was taken over for urban and transportation uses.

Breathing room. State park systems have been expanded rapidly, up from 5.7 million acres in 1962 to 9.8 million acres in 1975--a growth of 72 percent. The 4.1 million acres added for recreation and preservation in these 13 years is equal to the combined areas of Connecticut and Delaware.

With the growth of government ownership have come significant changes in the ways land is used.

Between 1950 and 1974, at a time when the U. S. was being called upon to help feed large underdeveloped regions of the world, 26 million acres of U. S. soil was diverted from raising crops, and the area used for pasturing livestock declined by 20 million acres. Forests were reduced by 3 million acres.

In that same period, 48 million acres of land was converted to urban areas, parks and industrial uses.

I'll talk about retention of prime and unique farmland later.

Second, government has the power of eminent domain to take certain private lands (with due compensation) needed for public purposes described earlier.

Third, taxation -- Local and Federal tax policy has significant impact on patterns of land use.

Fourth, the police power (the most common are the zoning ordinances, protection of owners against nuisances, subdivision rules, and so on.

Fifth, the power of public finance and licensing to subsidize highways, airports, power plants, and transmission corridors.

It is here we also find increasingly "the 'carrot and the stick' approach" of substantial Federal grants made to nonfederal governments to:

1. Develop and implement management programs for the coastal zones.
2. Plan for and carry out areawide waste treatment and pollution abatement for clean water objectives.
3. Achieve national standards of air quality, and
4. Section 701 - comprehensive (HUD) planning and the rural development program counterpart in USDA.

These all have serious implications for LAND USE.

In addition, this "back door" government approach to dictating how land is to be used is apparent in:

1. The extension--for water quality needs-- of Federal and state regulation to all navigable waters, i.e., dredge and fill permits.
2. Wild and Scenic Rivers and Endangered Species laws, and
3. Protection of prime agricultural lands from adverse effects of mining as prescribed by the Surface Mining and Reclamation Act.
4. The recent Executive Orders, 11990 on preservation of wetlands and 11988 on Flood Plain Management.
5. The increasing number of legal interpretations of NEPA and State Environmental Impact Statement Requirements.

This list of how government influences land use continues to grow and counters the commodity concept of land. This view (land as capital) was an engine of U. S. economic growth, and that growth served the Nation well. However, it has not been an unmixed blessing. Unguided and costly piecemeal spread of cities that justifies growth in any form as good in itself often ignored social costs, spawned strip cities, tragic disregard of the land as a resource and increased popular concern. More than 10,000 units of government now regulate how land is to be used, but much land is still with zoning restrictions. Scores of Federal and state agencies have some responsibility over some aspects of land use management.

This Nation has some of the finest resource management programs in the world. We have developed and managed land and water to produce vast quantities of high quality food, fiber and timber products at a relatively low cost.

But the exploding demands on our resources seriously challenge past methods of solving our problems.

Growth in the U. S. may require 50,000 new housing units a week from now until 2000. That means more land for roads, power plants, and job related industry. At the same time, prime land is being taken out of farmland uses at an accelerated rate.

USDA Secretary Bob Bergland calls these two opposing trends a "collision course with disaster." The Federal Government cannot pre-empt state and local governments in land use planning and control of nonfederal lands, but a national land use policy based on something besides economic anarchy is rapidly becoming a higher priority.

We do have three concerns, and one role of increasing advocacy.

First, local people and their government units and their private businesses make land use decisions every day. Those decisions are more likely to be successful if the local people realize all the implications of their actions--the resources involved, the people affected, the economic and social costs, the alternatives.

USDA has an assigned responsibility to provide information on the use and care of land and water resources, in understandable language.

Our first aim in our daily public information efforts is to provide that information to more people, so that more local decisions are made by the informed rather than the uninformed... so that more decisions are made by intent rather than by default.

If a community doesn't want to deal with land-use questions with help from USDA or anyone else, it doesn't have to. But that community ought to recognize that if it doesn't choose its own growth patterns that doesn't mean that no growth patterns are being chosen. A community that does not face the issues and make the choices may leave it to the "cut-and-run" builder to decide how and where a community will expand. Once a leapfrog subdivision is in place, the builder may be gone. Other people are left to demand or provide community services and solve problems, and to pay the increased tax bills for those services.

USDA's second concern is that our assistance programs to land-owners and communities be more consistent--that USDA speak with one voice, and that all Federal programs blend a little better in their handling of assistance programs that affect land use. The developer is not at fault for everything: One agency may help a community plan the kind of growth it wants and then a highway or a water-and-sewer system goes in and forces growth in another direction. In the future all Federal agencies will be looking at the land-use impacts of their investment decisions.

USDA's third concern is that Federal agencies manage their own property in ways that set a good example in resource use and protection and that do not unfairly infringe on the use of adjacent land owned by citizens or local governments. The Forest Service, for example, administers almost 1 of every 10 acres in the United States, in National Forests and National Grasslands. Its decisions affect the future of thousands of communities and millions of citizens.

USDA's role as an advocate is in helping people who want to remain farmers and ranchers stay in agriculture, particularly on what we term "prime farmland." There is a complex physical definition of prime farmland, but basically it is the land on which Americans can grow the most food and fiber with the least cost in energy, soil erosion, other environmental risks.

Should we continue to pave over our best land resource? America has a large share of the world's prime farmland--but it is a finite resource. At least a million acres of it are being converted to urban or water uses every year. That concerns USDA deeply in its mission of sustaining strong agricultural productivity for today's and tomorrow's domestic and worldwide markets. As Secretary Bergland said recently, America has had a "flatlands era" long enough. We began settling flat areas near harbors and rivers. We expanded onto other nearby flatlands usually farm or forest lands taking them permanently out of agriculture. We need a new strategy.

We shouldn't need more acres of prime farmland for urban uses. There are enough acres now within America's urban areas that can be developed. We could meet the needs of the millions of people expected in the next 75 years without pushing out our suburban perimeters at all--by developing good-quality available land within present community borders.

Prime farmland retention also protects the farmer from the harassment he might experience when people start building around him. Farming has many shared characteristics with industry--trucks and other machinery moving back and forth with raw materials or finished goods...unsettling noises and smells. There is sometimes damage to farm property or crops by their new neighbors.

Prime farmland retention also reduces the need for plowing up poor soils, wetlands, forests and rangelands to meet food and fiber demands.

The Council on Environmental Quality has asked every Federal agency to consider the effects of its individual projects or programs on prime farmland. USDA has a number of studies to inventory prime, unique, and other important farmlands.

In the face of these facts, it makes little sense for Federal investments to finance the disappearance of good farmland. Federal programs need to be run in a way that prime lands are converted to other uses only when there are no suitable alternative sites and when the actions are in response to overriding national needs.

Most states have adopted some way of encouraging the retention of prime agricultural land. Forty-two states have some form of differential tax rate for farmers. Their provisions vary widely. The farmer does deserve a tax break of some kind--but we need more for any long-term effect on land use patterns. Agricultural zoning is being used in some states. A few states are using voluntary agricultural districts, but farmers can get out of them any time they want. Wisconsin has now enacted a law providing an adjustment in state income taxes that shows some promise. The farmer makes less use of the major community services that typically are supported by property taxes, so it makes sense to de-emphasize the role of the property tax in local revenues.

Other states are trying various systems for buying or transferring development rights on farmland. Most counties will not have the money for extensive purchase of farmland or development rights on farmland, so most will have to turn to some other mechanism.

Some financial support may become available to counties and states that are trying to guide land use, manage growth, and protect valuable farmland. In recent Congressional hearings on an Agricultural Land Policy Act many counties and state agencies testified on the need for support. It would set up a study commission to review and compare what States are trying in land use programs.

Several pieces of legislation that have been enacted during the 1970's will affect local land use choices:

-- The Clean Water Act of 1977, calling for the control of water pollution from diffuse sources such as agriculture. It provides for technical help and cost sharing through USDA's Rural Clean Water Program, to treat the most seriously eroding areas identified under Section 208 water quality management plans.

-- The Soil and Water Resources Conservation Act of 1977 requires USDA to appraise the condition and quality of America's soil, water, and related resources; develop a 5-year program for soil and water conservation based on the appraisal; evaluate yearly our progress and effectiveness in the program; and encourage strong public participation at each step.

-- The Resources Planning Act administered by the Forest Service, calls for a similar appraisal and program on forests and rangelands. It has a similar directive on increasing the use of public ideas in designing programs.

-- The Coastal Zone Management Act that you will be discussing tomorrow.

-- The Surface Mining Control and Reclamation Act of 1977, can help not only in healing the scars of past surface coal mining, but also will see to it that new mining is done in a more environmentally acceptable way. Where prime agricultural land would be affected by new mining, SCS would help devise special precautions so the land could be returned to its original productivity.

-- Five Executive Orders signed by President Carter last year, one protection of wetlands, floodplain management, exotic plants and animals, use of off-road vehicles on public lands, and improvements in environmental impact statements. Under these Executive Orders a number of agencies already have altered their programs to improve their environmental responsiveness.

The laws and Executive Orders are aimed at encouraging Federal and state governments, private industry, and communities to consider a fuller range of alternatives and to hear from more segments of society that have a stake in any land use decision.

Whenever you open the door for wider points of view, you begin to encroach to some degree on a landowner's rights--what you will discuss tomorrow at "The Taking Issue." This is a basic legal issue in the area of land use. It is a legitimate concern for private property owners. It is necessarily present in any attempt to conserve some of America's better cropland.

Historically, land ownership meant that a man could do anything he chooses with his land, so long as he did no harm to his neighbor. The problem today is that there are more neighbors, they are closer, and they have a far greater variety of social goals--many of them conflicting.

Today's "taking issue" involves questions of property rights and duties and proper compensation--of police power versus eminent domain. A variety of state programs have been tested in the courts and the result is not completely consistent. Some have been upheld others struck down. The current outlook is that the courts will go along with any "reasonable" land use regulation to meet environ

or social goals. Your help as well as the opinions of landowners and other citizens will be needed to determine what constitutes a "reasonable" land use regulation.

The fact that new approaches to land use are being tried in so many states indicates a certain degree of failure in the past to achieve compromise on a strictly voluntary basis. Social needs obviously are going to be met, either through voluntarism or legislation. This is an area where you can provide valuable insights.

I believe that we can inform, educate, and involve people... we can make them aware of their needs, problems, opportunities, and choices...we can provide them with more chances to make intelligent decisions...and we can help them follow through on their choices.

I believe that we can help design new programs and demonstrate that they work...help people improve land use without drowning everyone involved in a sea of red tape...balance private rights with public interests so that each achieves some aims.

The topics you will be discussing tonight and tomorrow are vital ones for the future of America. I urge you to listen carefully ...to sort them out...to talk them over...to determine what can work in Alabama...and to help it work.

America needs land use programs that are built at or from the local level and that are judicially acceptable, socially productive, and environmentally sound.

Nothing you will learn at this conference will convert tough choices into easy ones. Yet you can help see to it that those choices are manageable ones.