

Land Use And Land Use Planning—An Overview

By Norman L. Cooper

Exhibit 1

Those of you who are involved in right-of-way acquisition have an extremely important responsibility that has a very strong impact on the land use in this nation. It is your primary concern that right-of-way acquisition be done with competence and integrity.

The concern of this paper, however, is not the acquisition itself, but what happens as a consequence of that acquisition, months, years, and decades later. The concern here is whether those consequences are what we want as a locality, a state, and a nation. What can be done to plan for and anticipate the consequences that may result from right-of-way acquisition and the construction and operation of public facilities on that right-of-way?

In the early seventies, one approach to this question was a concerted effort to pass what was then called a National Land Use Policy Act. Some were making the argument that we have no national land use policy, therefore we should pass a law. I always viewed that as a myth. We have a national land use policy. It may not be the policy that we particularly want; we might want to make adjustments or changes in it or completely rewrite it. But we have a national land use policy. It is embodied in the Constitution of the United States and in the laws of the nation that affect land use (see Exhibit 1).

Heading the list are two key sections of the Constitution of the United States. Under the headings of various Federal departments are many statutes that impact land use in this nation. Those in highway agencies are most directly dealing with the statutes listed under the Department of Transportation's Federal Highway Administration (FHWA) (see Exhibit 2). The Federal government provides funds for the planning, design, construction, and, in some circumstances, maintenance and operation of highways, which have a very strong influence on land use across the nation. The Federal government is not the only level of our society that has an impact on land use. State governments, under our Constitution, are delegated all responsibilities that are not set forth in the Constitution for the Federal government. The Constitution of the United States is in fact

National Land Use Policy Constitution of the United States

Amendment V:

"No person shall be . . . deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment X:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are referred to the States, respectively, or to the people."

Laws of the United States

Department of Agriculture

Soil conservation land use safeguards (16 USCA 590)

Grants for water and waste facility projects (7 USCA 1926)

National Forests (16 USCA 472)

Department of Commerce

Coastal Zone Management (16 USCA 1451) State Coastal Zone Management Programs: Boundaries; permissible land and water uses; designation of areas of particular concern; adequate state statutory authority; priority of uses; organization and management; consistency of Federal programs; energy siting, coastal access, coastal erosion.

Marine Sanctuaries (16 USCA 1432)

Estuarine sanctuaries (USCA 1401)

Economic Development Administration—planning and infrastructure loans, grants, guarantees, in economically depressed areas

Department of Defense

Corps of Engineers

Water Resources Projects (33 USCA 401, 407)

Navigation Projects (33 USCA 401, 407)

"Navigable" Waters 404 Permits (33 USCA 1251) dams, dredging or any other impacting activity

Air Force

Air Installation Compatible Use Zone (AICUZ) by local government with AF acquisition

Department of Energy

Licensing of nonfederal power plants (16 USCA 791)

Department of Housing

And Urban Development

National Flood Insurance Program (Public Law 90-448) Land use restrictions required

Community Development Act (42 USC 69)

Community Development Block Grants (Title I) Requires Community Development Plan, etc.

Housing Assistance (Title II)

Local government must certify consistency with housing assistance plan.

Comprehensive Planning (Title IV)

"701" grants must provide:

Housing plan

Land use plan: Existing land uses; land use needs (projections); public service needs; (impacts on: locals, taxes, air & water, CZ, etc.); growth distribution; energy conservation; effect on areawide, local, state planning and development.

Interstate Land Sales Full Disclosure Act (15 USCA 1701)
Real Estate Settlement Procedures Act (12 USCA 2601)
Mortgage Insurance Programs
Noise Control

Department of Interior—Federally-owned land
Historic Preservation Grants and Federal Register (36 CFR 800)
Management of Federal land (43 USCA 1411)
Dams and water resources—Bureau of Reclamation

Department of Transportation
Coast Guard—bridge permits (49 USCA 1655), deepwater ports (33 USC 1501)
FAA — (49 USCA 1701)
 Airport system planning grants
 Airport and airways development grants
 Airport noise, liability & environmental requirements
FHWA — Continuing comprehensive cooperative planning (23 USCA 134)
 Highway systems, location, design, construction
UMTA — (49 USC 1601) planning
 Grants, rail and bus
FRA — Grants to states for rail planning
 (Railroad Revitalization & Regulatory Reform Act of 1976)

Department of Treasury—IRS
Tax law favors:
 Homeowners over renters (IRC* 163)
 Expensive, low density, detached single family homes (IRC 163)
 Investment in new construction over rehab (IRC 167)
 Disincentive to maintain in long run (IRC 167)
 Construction of new buildings where land is cheap (IRC 167)
 Conversion of open rural land to development (IRC 1014)
 Promotes leap frogging (capital gains after owner dies) (IRC 1014)

* Internal Revenue Code

Environmental Protection Agency
Clean Air Act (42 USCA 1857)
 Ambient standards, state implementation plans
 Permits for stationary and indirect sources
 Significant deterioration
 Transportation control plan
Water Pollution Control Act (33 USCA 1251)
 National Pollutant Discharge Elimination System (NPPES)
 State continuing planning process—permits, EPA can veto, or issue if no state process, applies to private and public (e.g., sewage treatment)
 Areawide waste treatment management planning process, including regulation of location of development
Safe Drinking Water Act (Public Law 93-523)
 Aquifer protection—no Federal funds if may contaminate
Solid Waste Disposal Act (42 USCA 3251)
 Planning for areawide implementation is required of applicants for grants
Noise Control Act (42 USCA 4801)
 Development of noise emission standards through land use and other means

Water Resources Council
Grants for development of water and related land resources plans

a limiting document. Amendment 10 of the Constitution reads "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are referred to the States respectively or to the people." So, the States play a role in varying degrees. On the local government level, zoning responsibilities come to mind most quickly concerning land use and its affects. Zoning is by tradition, but not by Constitutional requirement, a responsibility of local government. There are about 10,000 local governments in the United States that are either carrying out zoning responsibilities or in many ways are affecting land use and its consequences. But land use impact is not limited to government. The private sector certainly is important in this nation that has been founded on a private economy and free enterprise and the free exercise of private property rights. The market forces, and private developers' understanding of the market forces, determine to a large degree where and what kind of development takes place.

Constitutional restraints on the Federal government in the land use area notwithstanding, there is a proliferation of laws affecting land use that have been passed by Congress over the years, examples of which follow:

The U.S. Department of Agriculture (USDA) administers Federal laws affecting land use concerning rural areas of the country. USDA is managing millions of acres of lands owned by the Federal government, primarily through the Forest Service. Federal controls and incentives to grow or not grow certain crops affect rural land use.

The Department of Commerce administers the Coastal Zone Management Act which some consider the farthest reach of the Federal government into land use planning and control. The Coastal Act is constitutional in that it does not directly dictate land use controls. But the Act authorizes grant funds to states that they can accept or reject; but if accepted, the states must prepare plans and exercise certain controls of the land uses in coastal areas. Further, the participating states must designate areas for protection and other areas for development. A critical element of the Coastal Act is the consistency requirement. The Act says that once a coastal management plan is adopted by