

VII. Potential Federal Roles

The right to control land uses exists and lies in the sovereign power of the state and may be exercised through the police power, eminent domain, and taxation....

(Ely and Wehrwein, 1964)

The primary direct authority over land-use matters under our constitutional system rests with the States. However, there have been issues raised throughout U.S. history about what role in land use, if any, the Federal Government should play. In the early 1970's, along with a tide of other environmental legislation, bills were introduced in the Congress by both political parties to establish a national land-use policy (Anderson et al., 1975). The proposals universally recognized the primacy of State authority but approached policy as a matter of "process reform," which would help the States meet the challenges of urbanization more effectively. In a foreshadowing of smart growth strategies, the proposals provided Federal grants to States to enable them to take back certain land-use control authorities historically delegated by them to local governments. Several States were already moving in this direction, having adopted more comprehensive State and regional planning processes in several areas, including Vermont, California, Hawaii, Florida, and Massachusetts (Bosselman and Callies, 1971; Healy, 1976; U.S. Senate, 1974). The national land-use policy bills were characterized as Federal enabling legislation to encourage States to exercise States' rights (U.S. Senate, 1973). Congress held hearings and debated proposals for 5 years. The Senate passed land-use policy bills in the 92nd and 93rd Congresses, but the issue died on a very narrow vote in the House on June 11, 1974 (Whittaker, 1976).

Against the backdrop of limited Federal land-use authorities has been the recognition that Federal Government programs can be powerful, and have pervasive influences on land-use decisions made by private and public actors (U.S. Senate, 1972). Federal income tax law, highway programs, sewer and water programs, and environmental programs have exercised great influence on land-use decisions. Most often, this pervasive Federal influence has been examined to see whether Federal policies aimed at other objectives are having unintended consequences for land use. Only occasionally have positive impacts from Federal leveraging been explicitly considered, and explicit leveraging of Federal spending to get land-use controls adopted at the State

or local level has only rarely been attempted. Recent examples include the Coastal Zone Management Act Reauthorization Amendments of 1990 and the Clean Water Act (U.S. EPA, 1996, 1993).

With the costs and benefits of controlling growth being largely local, States and the Federal Government may be seen to have little rationale for involvement. The expansiveness of modern metropolitan growth patterns, however, makes it clear that problems of growth are not confined to local government boundaries. Increasingly, States find it easy to rationalize a major role, on economic and political grounds, to say nothing of constitutional authority. The case for Federal involvement is less clear. Growth control issues recur in nearly every metropolitan area across the Nation. In this sense, it is identical to other "local" problems ranging from water quality to education that have been redefined as "national" issues. There are no clear tests that divide Federal and local issues: If a majority in Congress decides that a Federal role is appropriate, the Federal Government will act. The current outpouring of concerns over land-use and growth control issues poses questions that have been raised before:

- What, if anything, should the Federal Government do about growth?
- What role does farmland preservation play in controlling growth?
- What is the unique contribution of the U.S. Department of Agriculture?

In this chapter, we examine the evidence for unintended impacts on growth from Federal actions and the arguments for Federal assistance to local governments to indirectly and directly affect urban growth.

Helping Increase State and Local Planning Capacity

Because of the way that metropolitan areas grow, expectations of development often long antedate the development itself. Planning for development and the

design of growth controls need to be in place to contain such expectations, to avoid potential conflicts with property rights (National Commission on Urban Problems, 1969; ASPO, 1968). However, the ability to pay for all kinds of government services, including planning, is limited in rural areas with limited tax base. There is a disconnect between the time property transfers, leading to development, and the time tax revenues are available to pay for the planning capacity needed to control growth. There may also be a disconnect between jurisdictions approving development and those bearing the consequences. For example, by locating a shopping center on its border, a county can shunt traffic problems onto an adjacent county.

The conundrum regarding planning capacity and public responsibility for it in rural areas is longstanding. Rural residents have been antagonistic toward planning, and politicians are understandably wary about taking a stand on growth control, particularly well before it occurs.

In 1981, the National Agricultural Lands Study recommended that USDA "...assess the feasibility of providing small matching grants for 'capacity building' to state departments of agriculture (or other appropriate state agencies) that seek to manage agricultural land issues."

Before massive amounts of funding are made available exclusively for monetary incentives to preserve farmland, the case for a properly structured planning grant program needs to be revisited as a potentially more cost-effective use of Federal funds.

Coordinating Local, Regional, and State Efforts

Another potential role for the Federal Government in controlling growth is coordinating efforts across Federal agencies and across State and local government boundaries. U.S. GAO (1999) notes that there is increasing coordination among Federal agencies on growth-related issues, including the President's Council on Sustainable Development, and the EPA Smart Growth Network. GAO suggests that these efforts are too new, and the research is too limited, to provide guidance on how the Federal Government can better assist State and local governments in managing growth. There is a long history of Federal coordination through the Office of Management and Budget A-95 review process, which was designed to get feedback from surrounding com-

munities and State agencies on Federal Government funding proposals for local communities. During the 1980's, the A-95 review and comment process was transferred to the States. A recent report suggests that the process has deteriorated because most States have not been committed to continuing the process (National Academy of Public Administration, 1998).

While 36-42 percent of local governments responded that coordination with Federal agencies was good or excellent (GAO, 2000, p. 27), over 40 percent of respondents to GAO's survey wanted increased Federal incentives to pursue regional growth management strategies, such as smart growth. Increased technical assistance from the Federal Government was favored by 29-37 percent of local governments. GAO also points to Federal regulatory review authorities in the National Environmental Policy Act (NEPA) and the Farmland Protection Policy Act (FPPA) as opportunities to consider the potential influence of their actions on patterns of growth. Both NEPA and FPPA processes focus on assessing the impacts of proposed development that are influenced by qualifying Federal actions. For FPPA in particular, the decision regarding what lands to protect is in the hands of State or local governments, and their planning processes presumably would determine how growth control is addressed in the decision.

The National Environmental Policy Act (NEPA), passed in 1969, was the first step in a new suite of national environmental protection laws (Stokes and Watson, 1989). NEPA's key provision is a requirement for environmental impact statements (EIS's) for proposed actions that might affect the environment. Land-use changes are properly considered as impacts because the guiding language of the act discusses irreversible and irretrievable commitments of resources, relationships between short-term uses and maintenance and enhancement of long-term productivity, and alternatives to actions that can be avoided, all of which characterize land-use change. Private projects with major Federal funding are also covered by NEPA, in addition to agency actions.

The Farmland Protection Policy Act (7 USC 4201) directs USDA to work with other Federal agencies to develop criteria for identifying the effects of Federal programs on the conversion of farmland to nonagricultural uses. Federal agencies are to:

- use the criteria to identify and take into account the adverse effects of their programs on the preservation of farmland;

- consider alternative actions, as appropriate, that could lessen adverse effects; and
- ensure that their programs, to the extent practicable, are compatible with State and local government and private programs to protect farmland (7 USC 4202).

One of the beneficial features of the FPPA is that it is a potential source of information about conversions resulting from Federal actions.

The White House Task Force on Livable Communities required the establishment of a USDA task force to identify actions for maintaining agriculture and forestry in rapidly growing regions (White House, 2000). Among the charges to the task force was the admonition to "...consider the extent to which actions by Federal agencies, such as construction, development grants and loans and federal land management decisions, contribute to the loss of farm and forest lands and whether additional measures or policy changes can be taken to lessen their impact."

In response, a USDA Task Force categorized an impressive array of programs that "protect or convert farm or forest land," but concluded that the lack of compliance with the Farmland Protection Policy Act by other Federal agencies had resulted in a lack of information about the impacts of Federal programs.

Coordinating Federal Development Activities and Growth Management Goals

The Federal Government has had long experience in stimulating economic growth and development in rural and urban areas alike, but less experience in controlling growth. If both roles are undertaken, potential conflicts between the roles, and between different Federal agency goals could easily develop. In documenting the land development process, we noted the critical role of infrastructure investments in the growth process. Focusing NEPA and FPPA review on Federal programs involved in supporting infrastructure development, like sewer and water programs, would permit tradeoffs to be made between development and other quality-of-life factors better served by conserving rural land. For example, Section 201 Municipal Facilities Construction grants for wastewater treatment facilities and the Rural Housing Service's waste disposal and water supply system grants and loans help State and local governments finance sewer and water investments. These programs provide incentives and financing for construction and

upgrading of systems designed to address point source water pollution concerns and concerns over safe drinking water supplies (figure 11). There are potential conflicts between social objectives of clean water, safe drinking water, and rural development and the desire to control urbanization and reduce problems from growth. Facilities greatly oversized for the current population or inappropriately located relative to existing development centers contribute unduly to growth.

An oft-cited argument for a Federal role is the contention that powerful and pervasive influences on land-use decisions are inadvertently exercised by Federal programs aimed at other objectives (U.S. House, 1980; U.S. HUD, 2000). Most often identified as influential have been the interstate highway construction program, tax deductions for interest on home mortgages, and various programs for infrastructure investments in sewers, water supply, and schools. The U.S. General Accounting Office completed the most recent review of this argument, focusing on Federal programs and policies "reflecting decisions on spending, taxation, and the location of Federal facilities." GAO concluded that so many factors contributed to "sprawl," and that the relationships among factors were so complex, that researchers have great difficulty isolating the impact of individual factors (U.S. GAO, 1999). Anecdotal evidence supports the belief that the Federal Government influences growth, but quantitative results showing the magnitude or extent of influence is lacking. Program agencies have responded to such criticisms over the years as well, building review and mitigation features into their programs that reduce unintended negative impacts. GAO points out that the lack of evidence to measure the influence does not mean that Federal policies and programs have no effect.

A second GAO report surveyed local communities regarding the impacts of Federal programs (U.S. GAO, 2000). About half of the communities surveyed said that the Federal impact was low, very low, or nonexistent, compared with only 17 percent that rated Federal influence as high or very high. Many of the latter communities had large Federal facilities located in them or nearby (GAO, 2000, p. 18). Local officials cited three areas in which Federal programs affect their growth management activities: programs to construct infrastructure or other physical improvements; programs for infill development or urban redevelopment; and programs to preserve or protect farmland or open space (GAO, 2000, p. 17). Local complaints about Federal programs are generally not that the programs exist, but that there is insufficient flexibility to tailor the pro-

grams to local needs. In the case of farmland preservation, local officials sought more assistance (GAO, 2000, p. 26).

Past Federal programs may have inadvertently contributed to problems with urban growth. However, it is unlikely that new programs will be developed of a scale similar to the interstate highway construction program or the EPA Section 201 sewage treatment program. While tax deductions, like that for mortgage interest, are used in areas with new residential construction, short of abandoning a competing goal of increased homeownership, it is unlikely that these provisions will be repealed. Tax breaks for home mortgages could work just as effectively to subsidize new residential construction in compact suburbs or as infill development in cities.

Funding Monetary Conservation Incentives

The Federal Farmland Protection Program (FPP) was established in the 1996 Farm Act to provide funding to State, local, or tribal entities with existing farmland protection programs for purchase of conservation easements or other interests. The goal of the program, run by USDA's Natural Resources Conservation Service, is to protect between 170,000 and 340,000 acres of farmland. Priority is given to applications for perpetual easements, although a minimum of 30 years is required. FPP was funded at \$35 million (NRCS, 2000), and it was spent to protect 127,000 acres in over 19 States. FPP funding to date represents just 2.5 percent of total State funding on PDR, and less than 1 percent of potential PDR expenditures in highly urban influenced areas. Given these small percentages of past and potential PDR effort, the ultimate goal of Federal assistance to PDR programs is unclear.

The Farmland Protection Program is the only Federal program that provides direct financial incentives to address the farmland conversion issue through conservation easements. The Federal Government also supports farmland protection indirectly through Section 170 (h) charitable deductions under the Internal Revenue Code.

Several observations emerge from our analysis:

- Collectively, the amount spent by the public to preserve farmland through State and local purchase of development programs and Federal contributions to these programs amounts to more than \$2 billion, in

total. Annual tax expenditures for State use-value assessment programs are an additional \$1.1 billion per year.

- However, current efforts are only a small fraction of the \$130 billion cost of easements to protect all urban-influenced cropland.
- There are substantial tradeoffs between relatively weak instruments like preferential assessment versus purchasing development rights through a conservation easement. The annual expenditure on use-value assessment would cover a significant part of the cost of purchasing easements on cropland most heavily influenced by urban pressure. Purchase of development rights is the preferred tool in terms of effectiveness, but such programs have a higher up-front cost.
- To be used effectively, public funds for purchase of development rights should be used strategically. There are substantial tradeoffs between saving more acres under less development pressure, versus using available funds to purchase development rights on those fewer acres that are under more immediate pressure for development.

Federal direct support for farmland protection is arguably modest, amounting to less than 3 percent of State and local expenditures to date (American Farmland Trust, 1998). However, a clear rationale for a more expansive program is similarly lacking. The total amount of expenditures needed to acquire development rights on all cropland or farmland that could be expected to be developed over the next several decades ranges from \$87 to \$130 billion. Purchase of development rights should likely be done strategically, in conjunction with other growth management tools, rather than rely solely on monetary incentives. Absent some clear, mutually exclusive, Federal interest, the role the Federal Government can play in providing monetary incentives to preserve farmland is uncertain. The case for Federal involvement may simply rest on the argument that seed money is needed to persuade States to act. If that is the rationale, funds should be targeted to States with a demonstrable urbanization problem that is not being addressed by State programs. Another rationale could be that some Federal cost share is appropriate to support successful State initiatives. In this case, funding should go to States that can demonstrate a degree of effort in addressing farmland conservation, perhaps leavened by objective evidence on the scope of the problem occurring in each State.

Conserving Rural Amenities Part of Greater Agricultural and Trade Policy Goals

Policies that support agriculture could be tools for controlling growth. Agricultural land provides various public benefits, such as open space and scenic amenities. Many countries are actively trying to increase the supply of these benefits, and to reduce the negative by-products of agriculture, such as soil erosion. However, a word of caution is required when considering agricultural policy in what is increasingly a global trade context. As part of the 1994 Uruguay Round Agreement on Agriculture (URAA), member countries of the World Trade Organization (WTO) agreed to limit policies that cause trade distortions in international agricultural markets. These limits are not focused on policy objectives. Rather, countries have agreed to restrictions on the policy instruments used to achieve domestic objectives.

Policies that cause minimal or no trade distortions are considered to be part of what is called the “green box” (Vasavada and Warmerdam, 1998). The URAA places no restrictions on how much green box support can be given to farmers. Policies that do create trade distortions are placed in the “amber box.” WTO members have agreed to limit the amount of support provided by amber box policies, and to work to reduce amber box support levels in subsequent rounds of trade negotiations. Policies that directly target agricultural production may cause trade distortions by affecting relative international prices. Thus, agricultural price supports and production subsidies are likely to be subject to the amber box restrictions.

In general, policies that are not linked to production are likely to be considered part of the green box. Fortunately, it is also the case that many policy objectives can be more efficiently met by directly targeting the desired amenities than by targeting agricultural production (Bohman et al., 2000). In fact, for many desirable agricultural byproducts, there is no consistent relationship with increased agricultural production. For example, a scenic landscape may be no more lovely with 40 cows than it is with 30 (Mullarkey, Cooper, and Skully, 2000).

There is a desire, both in the United States and Europe, to keep farmland in farming, as evidenced by the “Working Lands” concept in the United States. Some degree of agricultural production is critical to achieving this policy objective. These objectives do not require trade-distorting subsidies, however, because there is a range of policy alternatives available that do not fall into the amber box. In the United States, purchase of development rights programs and the Federal Farmland Protection Program to assist State programs are examples. Other options include cost-share payments for adopting best-management practices, and support for metropolitan agriculture through research, training, and extension.

The European Community is discussing many policies that can help provide open space and other amenities (see Potter, 1991). Hodge (2000) discusses a range of policy options that are not linked to agricultural production. For example, European Conservation, Amenity and Recreation Trusts (CARTs), and U.S. conservation groups like Ducks Unlimited and The Nature Conservancy, purchase and manage lands in order to provide and protect various public benefits. These types of land purchases and management are facilitated by Federal and State laws granting tax-exempt status to nonprofit organizations (Wiebe et al., 1996). Other green box policies include agricultural zoning, urban growth boundaries, agricultural use taxation, and programs like the Conservation Reserve Program and Wetlands Reserve Program.

While there are some parallels between rural amenity goals in Europe and the United States, there are important differences. Farmlands provide a much larger percentage of the total landscape in Europe than in the United States, and thus are a much more important component of wildlife habitats and ecosystems. Development restrictions in Europe are generally more severe than in the United States, and property rights prohibitions against regulation less stringent. Agricultural landscapes in Europe are generally threatened more by abandonment to less intensive uses, compared with pressures for urbanization in the United States.