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MEETING WITH THE PRESIDENT

Friday, March 14

2:00 p.m. (15 minutes)

The Oval Office

Cancelled

MEETING ON LAND USE





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 13, 1975

MEETING ON LAND USE
Friday, March 14, 1975
2:00 P.M. (15 minutes)
The Oval Office

From: James T. Lynn

I. PURPOSE

To establish Administration position on new land use legislation.

II. BACKGROUND AND PARTICIPANTS

- A. Background: House Interior Committee to hold hearings on land use legislation March 17 and 18. Interior, Agriculture, and Commerce to testify.

Udall and Steelman (with 23 others) sponsor the House bill.

Jackson and Hatfield (plus 20) sponsor a Senate bill.

Nixon Administration supported land use as high priority legislation until it turned against the House bill last summer.

Your Administration has not yet decided a position.

- B. Participants: Rogers Morton, Jim Lynn, Jim Cannon, Jack Marsh, Paul O'Neill, Frank Zarb.

III. TALKING POINTS

- A. The primary purpose of the various land use bills is to declare a Federal interest in the methods by which State and local governments regulate use of private lands -- and to provide incentives for



State governments to exert a role in land use regulation in areas of greater than local concern.

The incentive mechanisms are (1) Federal planning assistance, (2) grants for regulatory program formulation, (3) grants for implementation of regulatory program, (4) commitment for Federal and Federally assisted programs to be consistent with State plans.

- B. An open question is the relationship of the energy facilities citing provisions of your Energy Independence Act, to the posture on general land use legislation -- should it be folded into general land use legislation, pursued independently, or abandoned in face of State and local opposition.
- C. Neither general land use nor energy facilities legislation will pass in this session without strong Administration support.
- D. Alternative postures on general land use legislation are:
 - 1. Support it in principle.
 - 2. Oppose it on "excess Federal involvement in State and local affairs" principle.
 - 3. Suggest postponement while Federal assistance programs affecting land use are reviewed to assess total Federal impact on State decisions.
 - 4. Oppose on grounds States are already establishing such systems and Federal bill is unnecessary.
 - 5. Suggest postponement under the "moratorium on new spending proposals" policy, and
 - 6. Commit to sending up our own bill.
- E. Meeting participants will present views and recommendations orally.



THE WHITE HOUSE

WASHINGTON

March 13

TO : WARREN

FROM: NORM ROSS 

Warren, attached is a draft we prepared on the subject of Land Use.

Earlier today we circulated a copy to OMB.

WASHINGTON

March 12, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES CANNON

SUBJECT: Land Use Legislation

We need your decision on this subject to provide guidance on the Administration position in testimony by Interior, Agriculture, CEQ, EPA and Commerce for their appearances before the House Interior Committee on March 17 and 18.

Background

The Administration first submitted land use assistance legislation in 1971. Since that time, it has supported the enactment of a bill which reflected its original proposal. On November 27, 1974, Secretary Morton recommended that the Administration submit land resource management assistance legislation to the next Congress. You met on November 29, 1974, with the Domestic Council Committee on Land Use to review



Administration policy. The meeting resulted in a request to examine two issues: Is it in the national interest for the Administration to submit land use legislation to the Congress, and what is the nature of existing Federal authority to influence the use of land not owned by the Federal Government and the methods by which such authority could be coordinated?

The former Attorney General, in a memorandum for your consideration, concludes that there currently exists very substantial authority for the Federal Government to effect land use planning and land use controls at all levels of government. This authority, however, is scattered among many different departments of the federal government, with little or no coordination. The Attorney General's memorandum is attached at Tab A.

The Department of the Interior has prepared a proposed bill which would encourage the timely implementation of State land resource management programs and which complements the existing Coastal Zone Management Act of 1972. The proposal has been sent to Departments and Agencies for their review. A summary of Agency comments are provided at Tab B.



Senators Jackson and Hatfield, with 20 co-sponsors, have introduced a land use bill. Hearings are likely to be scheduled for April. Congressmen Udall and Steelman (R-Tex.) have also introduced a land use bill with 23 additional sponsors. The House Interior Committee will hold hearings on the Udall/Steelman bill next week.

Issue

Should the Administration support land use legislation at this time?

Options

1. State that the Administration will submit land use legislation.
2. Candidly state that we do not know the total impact the Federal Government is now having on land use decisions. A rational decision on the need for additional Federal authority cannot be made until we clearly determine the extent of existing Federal involvement. Therefore, you are ordering a full review to be completed by mid-summer.

Arguments in Favor of Legislation

- Land use bills have been introduced; the Administration should be prepared to offer a responsible alternative.
- The Executive Branch supported legislation for four years and a reversal would be represented as anti-environmental.



- No current Federal programs encourage the States to resolve major land issues impacting more than one local government.
- There is a need to have Federal programs significantly impacting non-Federal land use be consistent with State programs.
- The Federal role proposed in the legislation is limited to financial assistance and a requirement of consistency of Federal actions and there is no Federal intervention if State fails to perform.

Arguments Against Supporting Legislation and for Additional Study

- We don't know the extent of current Federal control and authority over land use decisions by States, local governments and the private sector.
- Philosophical opposition by conservatives to any Federal land use law.



-- Whatever type of bill the Executive produces, Congress will inevitably try to load it down with greater specificity and Federal involvement, thereby creating a drawn-out confrontation and perhaps an inevitable veto.

-- This would be a new spreading program.

Decision and Recommendation

1. Submit a land use bill (such as recommended by Interior)

Interior, Agriculture, Transportation, EPA, Commerce, CEQ

Agree _____

Disagree _____

2. Conduct a full review to determine the extent of existing Federal authority.

Agree _____

Disagree _____



A





UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

MEMORANDUM FOR THE PRESIDENT

FROM: THE ATTORNEY GENERAL *WBJ*

SUBJECT: PRESIDENTIAL AUTHORITY TO COORDINATE FEDERAL
LAND USE ACTIVITIES

As is demonstrated in greater detail in the attached memorandum, there currently exists substantial authority for the federal government to effect land use planning and land use controls at all levels of government. This authority, however, is scattered among many different departments of the government, with little or no attempt made at coordination. For example, EPA, in implementing the Clean Air Act, may require the states to exercise land use controls as a means of achieving air pollution control. HUD's grant programs for community development require grant applicants to engage in comprehensive planning, including land use planning. Interior, through its management of the public lands, makes significant land use decisions which often affect private landowners as well. Because of the different orientations of the many agencies involved in land use matters, the objectives of their programs may not always be consistent with each other.

It would appear, however, that the authority to effect coordination of the various federal land use policies now exists within the Office of the President. With the exception of EPA, the departments whose responsibilities involve land use decisions are clearly subject to control by the President, since they are all "line departments" of the Executive Branch. 1/

1/ Presidential control would, of course, be limited by the bounds of the particular statute authorizing a department's exercise of land use measures. However, subject to this



For example, you could dictate the circumstances under which the Corps of Engineers should issue a Section 10 wetlands permit. You likewise could influence the conditions of HUD's regulations which specify the requirements grant applicants must satisfy. Without doubt, you have authority to direct the condemnation activities of the various executive departments. The President also has authority over the decisions of the agencies charged with the management of the public lands, such as the Department of the Interior. As discussed in the attached memorandum, public lands decisions affect not only the government's property, but also impact significantly on the uses to which adjacent nonfederal landowners may put their property.

As noted above, EPA is the only agency currently involved in land use matters over which the degree of Presidential control may be somewhat circumscribed. EPA bears some resemblance to an independent agency on the one hand and a "line" department on the other. EPA was created by Reorganization Plan No. 3 of 1970. Its primary functions were transferred to it from other departments of the Executive Branch, such as the Interior, HEW, and Agriculture. However, President Nixon's message to Congress concerning the Reorganization refers to EPA as an "independent agency."

Upon analysis, it appears that President Nixon's concern was to avoid placing the responsibility for environmental protection under the jurisdiction of an existing department having a primary mission other than the environment. The environmental views of such a department would necessarily be influenced by its own primary mission, thereby calling into question its impartiality toward other departments. Thus, it appears that in his reference to EPA as an "independent agency," President Nixon meant only an agency whose sole mission was the protection of the environment. Thus it is our view that the President does have the authority to control the land use decisions reflected in EPA's regulations.

However, it should be noted that although EPA is the agency with the most direct regulatory control over land use, at least one federal Court of Appeals has concluded that EPA

limitation, where the statute delegates rulemaking authority to the department to implement the statute, there is no apparent reason why the President could not direct the department to implement regulations which are consistent with his overall land use goals.



may not resort to this method of implementing the Clean Air Act unless all other emission control methods prove insufficient to accomplish the desired result. This is not clear from the language of the Act but must nevertheless be regarded as an additional limitation on the President's authority.

Beyond this, it should be noted that a small portion of EPA's function is to render quasi-adjudicatory decisions. These decisions must, of course, be of an independent nature to satisfy constitutional requirements. Generally, however, the vast majority of EPA's regulatory authority at this time can be characterized as rulemaking, which is a quasi-legislative function, and thus not subject to the requirements of an adjudicatory hearing and a decision based on the evidence adduced at that hearing.^{2/}

The only remaining question involves the procedural options available for coordinating the land use activities of the federal government. They include utilizing the Domestic Council,^{3/} OMB, or a new group headed by a Presidential Assistant or some combination of the above.

^{2/} An example of EPA's adjudicatory role is seen in Section 110(f) of the Clean Air Act, which under certain circumstances permits the Administrator, upon application of a Governor, to delay the applicability of an implementation plan to a particular source or class of sources. This decision must be made on the record after notice and opportunity for hearing. The actual promulgation of implementation plans, which might well contain land use measures, would be an example of EPA's rulemaking function.

^{3/} The Domestic Council was created pursuant to President Nixon's Reorganization Plan No. 2 of 1970. Its duties are broadly defined to include "such functions as the President may from time to time delegate or assign thereto." In the President's message to Congress transmitting the Reorganization Plan, the Domestic Council was described as a Cabinet-level group, designed "to coordinate policy formulation in the domestic area."

SEP. 1970

THE WHITE HOUSE
WASHINGTON

March 24, 1975

*Just copy
original being
routed through
system.*

MEMORANDUM FOR JIM LYNN
THROUGH: JIM CANNON
FROM: MIKE DUVAL
SUBJECT: LAND USE

I had a long talk with Sam Steiger concerning land use legislation. He thinks he may have the votes in committee to kill the bill. See the attached breakdown which he has given us. (Tab A)

Steiger has requested that the Administration take no further action on land use (other than the President's decision that it would be a new spending program) for at least sixty days, in an effort to prevent a bill from being reported out.

He agrees with my position, which is that at the threshold, we should determine what we are doing now and what existing authority we have at the Federal level to impact land use decisions by the private sector and non-Federal Government. To this end, he would very much like any information we have on this subject.

My recommendation is that we go forward with the work John Hill is doing on the Attorney General's compilation of the fully documented, existing Federal land use authority and activity. Then I suggest we put the issue before the President. Perhaps the best vehicle to do this is a re-write of the attached (Tab B) restructured to permit the President to decide on the substance of the land use issue. Our position can then be relayed to Congress, if requested, and with some sensitivity to the Steiger request.

cc: Charlie Leppert



FOR (15)

Morris K. Udall, Ariz.
Phillip Burton, Calif.
Robert W. Kastenmeier, Wis.
Patsy T. Mink, Hawaii
Lloyd Meeds, Wash.
Joseph P. Vigorito, PA
Jonathan B. Bingham, N.Y.
John F. Seiberling, Ohio
Antonio Borja Won Pat, Guam
Ron De Lugo, V.I.
Bob Eckhardt, Tex.
Paul E. Tsongas, Mass.
Bob Carr, Mich.
George Miller, Calif.
Alan Steelman, Tex.

AGAINST (OR LEANING) (18)

* Harold T. Johnson, Calif.
Abraham Kazen, JR., Tex.
Robert G. Stephens, Jr., Ga.
John Melcher, Mont.
Harold Runnels, N. Mex.
Goodloe E. Byron, Md.
Theodore M. Risenhoover, Okla.
Wright Patman, Tex
* Joe Skubitz, Kans.
Sam Steiger, Ariz.
Keith G. Sebelius, Kans.
William M. Ketchum, Calif.
Don Young, Alaska
Robert E. Bauman, MD.
Steven D. Symms, Idaho
James P. Johnson, Colo.
* Robert J. Lagomarsino, Calif.
Virginia Smith, Nebr.

UNDECIDED (10)

Roy A. Taylor, N.C.
Teno Roncalio, Wyo.
Jim Santini, Nev.
Allan T. Howe, Utah
James Weaver, Oreg.
Philip E. Ruppe, Mich.
Manuel Lujan, Jr., N. Mex.
Don Clausen, Calif.
James A. Haley, Fla.
Jaime Benitez, P.R.

* needs work



THE WHITE HOUSE

WASHINGTON

ACTION

March 14, 1975

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON
SUBJECT: LAND USE LEGISLATION

We need your decision on this subject to provide guidance on the Administration position in testimony by Interior, Agriculture and Commerce for their appearances before the House Interior Committee on March 17 and 18.

Background

The Administration first submitted land use assistance legislation in 1971 and continued to support it fully until June 1974, when that support was essentially withdrawn. On November 27, 1974, Secretary Morton recommended that the Administration submit basically similar land use legislation to the next Congress. You met on November 29, 1974, with the Domestic Council Committee on Land Use to review Administration policy. The meeting resulted in a request to examine two issues: Is it in the national interest for the Administration to submit land use legislation to the Congress, and what is the nature of existing Federal authority to influence the use of land not owned by the Federal Government and the methods by which such authority could be coordinated?

The former Attorney General, in a memorandum for your consideration, concludes that there currently exists very substantial authority for the Federal Government to effect land use planning and land use controls at all levels of government. This authority, however, is scattered among many different departments of the Federal Government, with little or no coordination. The Attorney General's memorandum is attached at Tab A.

The Department of the Interior has prepared a proposed bill which would encourage the timely implementation of State land resource management programs and which complements the existing Coastal Zone Management Act of 1972. The proposal has been sent to departments and agencies for their review. A summary of the bill is provided at Tab B and a summary of agency comments at Tab C.



The primary objective of Interior's legislation is to encourage the States, as opposed to localities, to become more active participants in land use decisions, particularly those affecting more than one local jurisdiction. While the Federal Government can and does have substantial impact on land uses, its authority to encourage direct State participation in land use processes is limited to the Coastal Zone Act, which covers only a portion of the land area of coastal states.

A new component of the issue this year is energy facilities siting. The Administration's approach on energy siting has generated significant adverse reactions from Governors and others who appear to believe that the issue should be dealt with in the context of broader land use bills.

Senators Jackson and Hatfield, with twenty co-sponsors, have introduced a land use bill. Hearings are likely to be scheduled for April. Congressmen Udall and Steelman (R-Tex.) have also introduced a land use bill with twenty-three additional sponsors. The House Interior Committee will hold hearings on the Udall/Steelman bill beginning on Monday of next week.

Issue

Should the Administration support land use legislation at this time?

Options

1. State that the Administration will support land use legislation.
2. Candidly state that we do not know the total impact the Federal Government is now having on land use decisions. A rational decision on the need, if any, for additional Federal authority cannot be made until we clearly determine the extent of existing Federal involvement. Therefore, you are ordering a full review to be completed by mid-summer.

Arguments in Favor of Legislation

- Land use bills have been introduced; the Administration should be prepared to offer a responsible alternative and try to influence the outcome.
- The Executive Branch supported legislation for four years and a reversal would be represented as anti-environmental. Land use is a very popular issue with the liberal members of Congress.



- The need is shown by favorable State response to coastal zone programs; there is no less a need in non-coastal States and in non-covered areas of coastal States.
- There is a need to have Federal programs significantly impacting non-Federal land use be consistent with State programs.
- States need Federal incentives to point to in order to regain control from local governments.
- The Federal role proposed in the legislation is limited to financial assistance and a requirement of consistency of Federal actions and there is no Federal intervention if State fails to perform.

Arguments Against Supporting Legislation and for Additional Study

- We don't know the real extent of current Federal impact on, and control over, land use decisions by States, local governments and the private sector.
- Philosophical opposition by conservatives to any Federal land use law.
- States are clearly responsible for land use control and they should be responsible for solving any problems that exist within their boundaries.
- Whatever type of bill the Executive produces, Congress will inevitably try to load it down with greater specificity and Federal involvement, thereby creating a drawn-out confrontation and perhaps an inevitable veto.

DECISION AND RECOMMENDATION

1. Support land use legislation at this time. (Recommend: Morton, EPA, CEA, Agriculture, Commerce, Transportation, FEA)

Agree _____ Disagree _____

2. Conduct a full review to determine the extent of existing Federal authority, with a view to determining whether or not additional authority needs to be sought at a later date. (Recommend: Lynn, Cannon)

Agree _____ Disagree _____

