

Секция «Юриспруденция»

The Procedures of the Land Use Regulatory System in the USA

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Land use regulation is one of the most influential areas of public law and therefore it is inevitable to carry out the research within this branch of law and develop it, inasmuch as land use affect the environment where we live and exercise our rights.

The United States of America has no national land use legislation. Nearly 71 percent of land in the United States - about 1.5 billion acres—is in private ownership or managed by state agencies, local units of government, and indigenous tribal authorities. The remaining 29 percent (402 million acres) is federally owned and administered by four federal agencies:

1. Bureau of Land Management (BLM),
2. National Park Service (NPS),
3. Fish and Wildlife Service (FWS) in the U.S. Department of the Interior (DOI),
4. The USA Forest Service (FS) [8].

Governments depend on nationally consistent maps and images to help make informed decisions about land and natural resource management, community and economic development, hazard mitigation, environmental protection, public health and emergency response activities. All federal land is managed in accordance with several U.S. environmental laws, including the Endangered Species Act (ESA) of 1973 [2], the Federal Environmental Pesticide Control Act of 1972 [1] and the National Environmental Policy Act (NEPA) of 1969 [3].

Use of privately owned land is primarily governed by state or local laws, and many states and local jurisdictions have programs aimed at planning and managing land resources.

Land use law and policy are blamed for many social and environmental problems, such as urban sprawl [10], environmental injustice [13] racial segregation [14], degraded water quality and watershed health [10], furthermore, the land use regulatory system has been characterized as inefficient or wasteful [12], captured by self-seeking private interests [4], class-biased [7] and environmentally destructive [5]. In this way we want to figure out where is the root of these land use law and policy misunderstandings and problems.

In order to analyze the problem we would like to show the basics of the United States land use regulatory system and, as far as this regulation is not unitary, its juxtaposition with different procedures.

Reichman call these procedures “systemic processes that contribute to the overall functioning of the system, but they do not need to be continuous (i. e. without interruption), dominant within the system, or immutable” (Reichman 1987, p. 49) [11]. At least thirteen procedures might be identified in the US land use law:

- Studying and Assessing. Pervades land use decision making and regulation [7]. Land use planners take into consideration all foreseeable impacts of versatile future influence on the land when developing land use plans, whether taking a long term plans for the whole State or area-specific plans;

- Planning. The procedure of systematically establishing goals and policies to guide future land use activities. Professional planners—land use planners, urban planners, transportation planners, community services planners, and others— play an important role in the land use regulatory system [15]. Land use decisions of all types are required by statute, case law, or both to be in accordance with a comprehensive plan [6];

- Regulating;

- Deliberating and Deciding;

- Enforcing. Enforcement is an inevitable part of any regulatory system. Requirements followed by landowners create mechanisms for monitoring compliance with regulations in the analyzed area. Regulators may even use criminal prosecution against violators. At the same time, public education, understandable information, and interactions between government staff and interested persons (landowners, community groups, developers) may create less formal but more effective regulatory enforcement mechanisms;

- Creating and Building;

- Preserving;

- Cooperating;

- Problem Solving and Adapting.

Finally, with growing concern over the social impacts of sprawl and the environmental impacts of development, local authorities are now adapting land use laws to protect ecological resources and to promote “smart growth” policies [16]. However, there is still a room for improvement in our understanding of various combinations that stimulate versatile types of changes in the land use regulatory system.

Therefore, some of the problems mentioned at the beginning of this article could be related to historical development of some States and their case law, remaining problems could be linked to enforcement problems that might be decided by further development of different procedures.

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