FOREIGN INVESTMENT IN U.S. REAL ESTATE

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FOREIGN INVESTMENT IN U.S. REAL ESTATE

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PREFACE

Section 5(6) of P.L. 93-479, The Foreign Investment Study Act of 1974, calls for an analysis of foreign direct investment in real property holdings in the United States. The analysis of real estate investment, outlined in a letter of agreement from the Department of Commerce to the Department of Agriculture, in June 1975, is one aspect of the larger study of foreign direct and portfolio investments.

The letter of agreement called for a comprehensive report to include background and history; structure and processes of real estate exchange; effects of investment in land on employment, savings and land use; special issues such as urban real estate and investment management; juridical issues pertaining to disclosure and control of information; methods of inquiry; and shortcomings of current ownership data sources. Each of the 21 chapters of this report represents a separate and distinct work of the authors based on a seminar held in Airlie House in September 1975.

National data on real estate are extremely limited. Information on real estate is fragmentary, local, and scattered among local government offices, private industry fields, or individual landowners. Ownership is easily disguised and information easily controlled. The ethic and conduct of industry and commerce generally, and the real estate institutions particularly, encourage confidentiality because market advantage runs with secrecy. It is not surprising that the real estate industry does not wish to donate large quantities of their stock in trade--information.

Real estate represents a small portion of international investment. Its importance is not its quantity at this time, but its possible future implications for investment policy. Even more significant as a policy issue is that we have such limited information on wealth holding. We do not know who our landowners are, foreign or domestic.

In preparing this report we solicited information from most of the major national and international organizations, with little or no addition to our data base on foreign ownership of land. Some contact with brokers, counselors and financial representatives was helpful for color, view, and general outlook. However, we obtained little or no better quantitative information than is available in reports in newspapers, news magazines, and trade journals. The real estate investment problem, then, is actually an information problem and that is the dominant theme of much of this report. The issues most often reduce to contrasts of secrecy and disclosure. Many of these same information contrasts are found in other aspects of our commercial and industrial life. There are unique features (for example, title recording,) of real estate, but secrecy and disclosure pertain as well to other forms of wealth. In this study we have inquired whether the public has the right to know how much wealth is held, by whom it is held, and how trade in land is conducted.

Rather than compiling fragments of information, we have stressed policy issues examined from a detached academic point of view. Most of the authors are university personnel. Despite their common familiarity with land and related resources, the authors represent widely divergent backgrounds and regional identities. They bring analytical talent to the issues. We have not stressed quantitative data in this report for two reasons: (1) Time available was not sufficient to obtain the quality of data we felt would provide a better factual basis than data currently available; and (2) the issues, particularly as they apply to land, had not been refined to a point where policy-oriented research should proceed to data collection. For readers wishing a perspective on the quantity of foreign investment of real estate, some specific information is contained in the separate sections and in Appendix II of the concluding chapter.

June 1976 G. WUNDERLICH

Parts of this report also appear as U.S. Dept. of Commerce, Foreign Direct Investment in the United States, Vol. 8, Appendix L (1976).

We gratefully acknowledge the financial support of the U.S. Department of Commerce. However, the opinions and conclusions in the papers are solely those of the authors and are not necessarily accepted or approved by either the Department of Commerce or the Department of Agriculture.

ACKNOWLEDGMENTS

The authors acknowledge with thanks the many anonymous persons who contributed insights, hunches, and the few facts available to them. Several persons in the real estate and financial world helped provide real world information and opinions (not always in agreement with the authors) that are reflected in the report, although the origin of the information is not always cited.

Valuable counsel was received from Hugh Brodkey, Chicago Title Insurance Company and James McMullin, Real Estate Service, Inc. For their incisive and helpful comments we thank George Lefcoe, University of Southern California; Philip Raup, University of Minnesota; Maury Seldin, American University and Michael Sumichrast, National Association of Home Builders. We wish to acknowledge the usefulness of Frank B. Hawkinson's report, Foreign Investment Inside USA, and the services of The New York Times Information Bank. Appreciation is also expressed for the bibliography supplied by the American Chapter of the International Real Estate Federation.

David Moyer, James Lewis, Douglas Lewis, and Robert Boxley in Natural Resource Economics Division of Economic Research Service made helpful comments, and discussed several issues in the inquiry. Ken Krause, National Economic Analysis Division, ERS, performed many liaison duties with Commerce and provided useful information and suggestions. The authors and editor thank Verla Rape for assisting in seminar and preparation of the report manuscript and Louise Samuel for editorial assistance.

In addition to the financial support from the agency, many persons in the Department of Commerce were helpful. We would like to note especially the assistance of Steve Johnson, Milton Berger, Stephan Robock, Leo Maley, Brant Free and Ada Wrigley.

CONTENTS

The sections are separately authored and self contained but there is an overall pattern in the report which readers may find useful:

Part I, the Real Estate Institution, examines the historical, legal, sociological, and political features of foreign investment as a knowledge problem. Do the people, attitudes, processes, and rules constitute an understandable institution? If there is a real estate institution is its behavior an issue in public policy? If public policy is to be approached rationally what knowledge is needed?

Part II, Real Estate Behavior, takes a microcosmic view of economic behavior. From the mundane practical to the highly abstract the question is the same: How does the individual respond to economic forces? These responses are illustrated in Iowa farmland transfers.

Part III, Economic Impacts, asks broader economic questions--those facing the economy as a whole--employment, capital formation, resource use and wealth distribution. Are foreign investments in land beneficial, and under what conditions?

Part IV, Economy of Resources, deals with economic impacts in more specific detail with resources (timber, minerals, recreation) and areas (Hawaii, Texas, Colorado).

Part V, Law of the Land, summarizes most of the legal issues associated with urban and rural land ownership by foreign investors. These issues include federal-state authority, state ownership control and land use legislation. The legal analysis reaches from treaties to the administration of zoning laws.

Part VI, Information and Law, reviews information needs, current technology for information, legal problems in reporting and a review of the setting and operation of Iowa's new reporting law. Anonymity and disclosure are treated both as technical and value issues in policy.

These sections on the institutions, economic impacts, legal issues, and information systems are arranged as follows:

THE REAL ESTATE INSTITUTIONS

SUMMARY

FOREIGN INVESTMENTS IN U.S. REAL ESTATE: AN OVERVIEW

John F. Timmons*

Investments in the Early Years

The United States Government and its predecessors, the 13 colonies, developed a relatively open door policy for both immigrants and investments emanating from other countries. Both were welcomed as essential resources in the development of the nation.

Throughout the 17th, 18th, and 19th centuries, as immigrants and investments from other countries moved to particular communities in the United States, there was an undercurrent of resentment toward outsiders entering local labor markets, and particularly toward foreign investment in local lands. But this attitude was for the most part subordinated to colonial, and later state and national, needs for foreign settlers and foreign investments in developing the nation's land resources and related industries.

Emerging Developments Affecting Foreign Investments

In the early decades of the 20th century, several developments prompted the reassessment of state and national needs for foreign investments. The nation's lands had become settled; internal transportation improvements had become a reality; industries had become established; the need for foreign investments had declined. During World War I, the United States changed from a debtor to a creditor nation. U. S. firms and individuals began investing funds in other countries, where capital needs invited investment both (1) in natural resources as essential raw materials for rapidly growing U. S. industries, and (2) in markets for the products of these industries.

Also, during the middle decades of the 20th century, resentments to foreign investments in land gradually surfaced in the form of state laws enacted to limit land holdings by aliens. By 1975, 29 state laws had been enacted

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with the purpose of limiting foreign land holdings in the respective states.1/ Colonial law established the content of land ownership prior to the adoption of the U. S. Constitution. After the nation gained its independence, the primacy of the states in formulating conditions of land ownership was continued. "Federal legislation has entered into this field only in two major areas. Federal laws apply when the regulation of land ownership is incidential to some other legislative power of the federal government, like the power to regulate interstate commerce. Thus, for example, the federal government regulates interstate land sales. Federal laws also apply when lands are owned by the federal government."2/ Thus, it was logical to expect states to enact laws limiting alien land holdings as part of their traditional responsibility in setting the rules for property in land.

Stimulated by the perceived increased rate of foreign investment in the United States during the 1970's, citizens began to press for federal legislation which would set limits and conditions for alien investments throughout the U. S. as a whole.

Responding to citizen demands, the U. S. Congress initiated activity into alien investments in 1973 and enacted the "Foreign Investment Study Act of 1974" (Public Law 93-479) which became law with the President's signature on October 26, 1974. This Act recognizes the many complexities of legislation dealing with foreign investments. It also recognizes the urgent need for information necessary to assess the nature and magnitude of the problem, and to suggest legislative directions and possible options to deal with the problem.

If the traditional neutral policy toward foreign investments are modified, appropriate information will have to be obtained and analyzed as the basis for policy and legislative formulation. Such modifications must necessarily consider the flow of investment capital from the U. S. to other countries as well as from other countries to the U. S.

Scientists in the Department of Agriculture and the Land Grant Colleges and Universities, have been engaged in gathering and analyzing national and state land ownership data over the last half-century.3/ Data from some of these studies have been used in developing state legislation on

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1/ U. S. Department of Commerce, Foreign Direct Investment in the U. S. Interim Report to Congress. Volume 2. October, 1975, p. xi-ii.

2/ Ibid., p. xi-ii.

3/ For examples of these studies, see Turner, H. A. The Ownership of Tenant Farms in the North Central States. U. S. Department of Agriculture. Bulletin 1433, 1926; Gray, L. C., Stewart, Charles L., Turner, Howard A., Sanders, J. T., and Spillman, W. J. Farm Ownership and Tenancy. U. S. Department of Agriculture Yearbook, 1923, pp. 507-600; Timmons, John F. and Barlowe, R. Farm Ownership in the Midwest. Iowa Agricultural Experiment Station Research Bulletin 361, 1950; Strohbehn, Roger W. and Timmons, John F. Ownership of Iowa's Farmland. Iowa Agricultural and Home Economics Experiment Station Research Bulletin 489, 1960.

foreign land ownership. This was the case in Iowa, which enacted legislation in 1975, mandating the reporting of alien land ownership in the state.1/

This study summarizes and assesses the limited available information on the nature and magnitude of alien investment in U. S. lands. This assessment includes positive as well as negative effects of foreign investments. In making this assessment through use of available information, further data and research needs are identified together with priorities for future studies. Suggestions are also made, where warranted by existing data, for policy and legislative considerations concerning foreign investments in U. S. real estate.

This chapter presents an overview of foreign investment in U. S. land. This overview delves into: (1) the nature and role of land and its ownership, (2) incentives for foreign investments in U. S. real estate, (3) U. S. investments in other countries, and (4) three scenarios of alien investments in U. S. real estate. The various chapters of the report provide the basis for legislative and other actions on investment in land.

Nature and Role of Land Ownership

Most immigrants to the United States over the years have been landless people with a deep desire to own land. These immigrants and their descendants built a land system in the U. S. that is saturated with the ideal of land ownership--of homes, farms, and factories.2/

Although ownership has not always been realized, U. S. citizens fashioned a land system tilted heavily toward land ownership. Laws relating to preemption, homesteading, housing, farm credit, small business, state homestead tax exemption, farm ownership, have been enacted to strengthen and foster land ownership.

The U. S. became a haven for people throughout the world seeking land. This haven has been accessible to land investors regardless of whether or not they were U. S. citizens. Land description, measurement, possession and title components of the U. S. land system have protected land owners from the uncertainties of ownership and occupancy that prevail in most other countries.3/

The roles of land ownership in the United States are numerous and diffuse. Basically, land ownership is an essential part of the states' sovereignty,

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1/ Chapter 946A, code of Iowa, 1975 as amended.

2/ Harris, Marshall. Origin of the Land Tenure System in the United States. The Iowa State College Press. Ames, Iowa, 1953, pp. 406-411; Hibbard, B. H. A History of Public Land Policies in the United States. The Macmillan Company. New York, N.Y., 1924, pp. 347-385.

3/ Hibbard, B. H. A History of Public Land Policies in the United States. The Macmillan Company. New York, N.Y., 1924, pp. 32-55.

which is shared by individuals through exclusive but not absolute rights vested in the owner. The state retains the powers to control and to take private rights through its tax, police, and eminent domain powers. Through application of these powers, the state maintains its sovereignty in land on behalf of the state and nation. The state and national governments also maintain proprietary powers in public lands. Of the 2.2 billion acres of land within the United States, the federal government owned 753.3 million acres in 1970.1/

Contrary to traditions of sovereigns throughout most of the world, the U. S., through policy and implementing activities, has traditionally encouraged private ownership of most of the nation's lands. Initially, public lands held and acquired by the federal government were distributed to private owners through sales. These sales provided a needed source of revenue for the fledgling nation to retire its debt to creditors in other countries.2/ This was an initial role of land.

Subsequently, public lands were alienated through numerous grants and transfers to private parties in the interests of developing the nation and of enabling citizens to use and develop lands with relative freedom and independence. This dispersion of private ownership of the nation's lands was viewed by national leaders and citizens as conducive to stability of communities, efficient and productive development and use of land, employment and investment opportunities, and the distribution of wealth and income among the citizens.

All of these roles have been served by land and its ownership with varying degrees of success over the two centuries of this nation's existence. These roles, imbued with private ownership and freedom of use and disposal of land, invited investment from other countries.

Foreign investments in firms and industries providing (1) the inputs required in the use of land, and (2) the facilities for processing, transporting and marketing products from land, should be studied in conjunction with foreign investments in land. The nature and effects of such foreign investments tend to be more subtle and less conspicuous than foreign investments in land. Yet, foreign investments concentrated in key input, processing and marketing firms and industries, possess the potential of affecting the economic, social and political wellbeing of the U. S.

Incentives for Foreign Investments

Analysis of foreign investment in U. S. land necessarily involves identifying and examining the incentives for foreign investment. Theoretically,

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1/ Public Land Law Review Commission. One Third of the Nation's Land: A Report to the President and to the Congress of the United States. U. S. Government Printing Office. Washington, D.C., 1970, p. x.

2/ Hibbard, B. H. A History of Public Land Policies in the United States. The Macmillan Company, New York, N.Y., 1924, pp. 56-81.

investment funds may be expected to move across national boundaries in pursuit of profitable and safe investment opportunities. However, the matter of international investment incentives appears much more complicated.

Twelve kinds of incentives for foreign investors in U. S. land are identified and presented. No attempt was made to rank or order these incentives, since their relative importance depends largely upon the preferences of individual foreign investment entities. These preferences vary widely with individual desires, alternative investment opportunities, and conditions in the investor's native country. But the point remains that foreign investors believe their motives will be fulfilled through investments in the U. S.

(1) Hedge against inflation. The U. S. has traditionally experienced relatively stable prices and costs, compared with other countries. Although the United States has experienced considerable inflation during the past decade, the rate has been relatively lower than in most other countries. Also, foreign investors expect that the U. S. has the capability and necessary institutions to manage inflation better than other countries. This opinion appears to be warranted by current trends.

(2) Safety of investment. Investment in U. S. land provides a refuge from internal reforms and disorders. This incentive is particularly important to foreign investors in light of substantive land reforms in process and in prospect throughout the world. Also, the economic and political power of the U. S. minimizes the threats of external disturbances.

(3) Capital appreciation. Expectations of capital appreciation in both urban and rural land appear warranted in the rural and urban land sectors. Recent upward trends in land values are expected to continue, particularly in selected growth centers and industries.

(4) Income flows. Income generated from U. S. land investments as inherent constituents of the national economy, appear competitive with alternative investments open to foreign investors.

(5) Tax advantages. U. S. land investments offer tax advantages compared with taxes in other countries, particularly European countries.

(6) U. S. dollar versus other currency. The relative stability and acceptability of the U. S. dollar throughout the world, provides another incentive for foreign investment in the U. S.

(7) Access to resources and technology. Investment in U. S. land provides access to U. S. natural resources, materials and technology. This constitutes another incentive for foreign investment, particularly in land.

(8) Access to internal markets for products and product components. This incentive may be particuarly attractive to specific foreign investors.

(9) Balancing investments portfolios. In terms of safety, income, capital appreciation, and other factors, U. S. land provides incentives for portfolios in which such incentives are needed.

(10) Capital and personal haven. Some foreign investors may be interested in establishing a haven in the U. S. for further investment of flight capital. Such investments may provide personal refuge from internal uprisings, reforms and disorder within their native countries.

(11) Intangible benefit. Other foreign investors may be attracted to land investments because of satisfactions, prestige and psychic values derived from owning land within the U. S.

(12) Control factors. The motive of gaining control of strategic land resources as a basis for economic and political power within the U. S. remains a possible incentive for foreign investors.

Further consideration and analysis of these incentives appear both relevant and necessary, in assessing the problem of foreign investment and in suggesting avenues of legislation if remedial action proves warranted. Each incentive carries with it an inherent remedy. But much more information is needed if we are to establish a basis for understanding the potential problems and what might be done about these problems.

Investments in Other Countries

Foreign investments in U. S. lands cannot logically or pragmatically be disassociated from investments by U. S. investors in other countries. Both are integral components of the dichotomy of foreign investments viewed from their national source and national consequence. Actions taken to discourage foreign investment in U. S. land, will likely be countered by similar restriction on U. S. investment in other countries.

Adequate data are not available on the amounts, kinds, and consequences of foreign investment in the U. S. in relation to the amounts, kinds, and consequences of U. S. investments in other countries. But U. S. investment in other countries substantially exceeds foreign investment in the U. S. Direct investments abroad, at $120 billion, are more than five times the foreign direct investment in the U. S.1/

Preliminary surveys made by the United Nations Development Program, indicate that most of the multinational corporations are chartered in the U.

1/ See International Economic Report of the President, March, 1945, pp. 43-44; U. S. Department of Commerce, Interim Report on Foreign Direct Investment in the United States. October, 1975, Vol. 1, p. 5. Also, see Breckenfeld, Gurney. Multinationals at Bay. Saturday Review. January 24, 1976, pp. 12-22. Also, see U. N. Department of Economic and Social Affairs. The Impact of Multination Corporations on Development and on International Relations. United Nations. Publications Sales No. E.74.11.A.5. New York, N.Y., 1974, pp. 25-32.

S. These U. S. based corporations have made large investments in other countries, but the precise amounts and nature of investment have not been determined. Little is known about the investments of U. S. individuals and smaller companies and corporations in other countries. Less is known about the implications, effects, and incentives of these investments, including favorable and unfavorable effects on the host country. In the wake of the United Nations Development Program surveys, the United Nations, in 1975, created both a Commission on Transnational Corporations and an Information and Research Center on Transnational Corporation to study their extent, nature, and effects.

U. S. investments in other countries, accompanied by related technologies and management, may be furthering the development of these countries. U. S. investments in other countries, accompanied by technologies and management might also have negative effects on the host country's economy, culture, and political wellbeing. We do not have answers to these questions, but studies of the means and consequences of U. S. investments abroad without presuming they are the reverse of direct investments in the U. S., constitute important complements to the present analysis.

Three Scenarios Regarding Foreign Investment

Three scenarios encompassing foreign investment in U. S. land may illustrate approaches to the problem and the necessary information needed to support each approach.

One scenario would prohibit all further foreign investment in U. S. land, at least until such time as the amount, nature and consequences of these investments could be ascertained and analyzed. Such a policy could be legislated and enforced. But in the process, the U. S. would construct a nationalistic wall around its borders which would certainly trigger retaliatory policies on the part of other countries. This would have serious consequences for U. S. investment abroad, foreign trade, and relations with other nations. Such a scenario appears entirely unbecoming a leading nation of the world. Nevertheless, studies might well be undertaken to reveal the nature and magnitude of possible consequences of such an approach.

A second scenario on foreign investments in land would open the doors wide to foreign investment in U. S. land. Assurances would be given by the U. S. that foreign investments would be welcomed and protected. This approach would appeal to foreign investors, and no doubt considerable additional foreign capital would flow into U. S. Although foreign capital is not unlimited, it appears probable that the flow into specific areas and selected critical enterprises and industries would require a study of the consequences on the U. S. domestic economy. Similarly, such studies should include possible effects on other countries from which the capital would be diverted. Of course, as a last resort, the U. S. could (after attracting large sums of foreign capital) nationalize the investments and thereby recoup much of the U. S. outlays for foreign imports of oil,

autos, natural resource, and manufactured products. After all, this would not be unlike certain policies other countries have applied to the U. S. on occasion. However, such a scenario, like scenario one, does not appear fitting or realistic for the U. S. to pursue. But it might be worthwhile to obtain and analyze data appropriate to such a scenario.

A third scenario differing from both "open door" and "closed door" postures, admits foreign investment in a continuation of past policies. However, this scenario would identify quantitatively and qualitatively investments that have taken place as well as those currently in process. This third scenario would identify and estimate current and projected kinds and amounts of foreign investments in terms of their probable effects upon: (1) the U.S. economy and subsectors thereof, (2) traditional roles of land ownership, (3) U. S. investments abroad, (4) economies of other countries and (5) international trade and relations which affect all nations, particularly the U. S. Such a scenario appears most conducive to understanding and acting on the foreign investment process.

Of course, we need to study these three scenarios and perhaps additional scenarios. But is it not likely that research can be made relevant to action unless certain hypotheses, with their data needs, are set forth and tested as an initial and integral part of the research. Questions in the form of hypotheses must be raised before answers can be formulated. This reasoning seems to be in line with the Foreign Investment Act of 1974, without which this report would not have been prepared.

In the meantime, federal legislation could give serious consideration to mandating the reporting of all foreign investors or those with investments deemed significant in U. S. land and conjoint enterprises. Such legislation could well consider state experiences with this type of legislation. Thirty states have enacted legislation encompassing various elements of alien ownership of land reporting systems, as shown in Chapter (Zumbach and Harl) of this report. Results of reporting legislation could yield data on the identity, form, extent, and nature of foreign investment by specific investors from particular countries.

Results of reporting legislation would enable the sampling of cases. Further studies could then proceed to (1) assess the nature and magnitude of foreign investment in U. S. land, (2) evaluate effects of foreign investment on national and local economies and (3) develop legislative options for ameliorating and preventing problems as determined by analysis.

Without adequate data and reliable analysis, approaches to foreign investment most likely would be fashioned from emotion, myths, and fragmented information that may be more misleading than no information.

National action in the foreign investment area requires much more information and analysis than is presently available if such action is to be well reasoned and appropriate. Hopefully, Public Law 93-479 will provide important motives, initiatives, and directions for research institutions and their scholars to proceed with the needed studies adequately funded by the national and state governments.

A SURVEY OF ALIEN LAND INVESTMENT IN THE UNITED STATES, COLONIAL TIMES TO PRESENT

Terry L. Anderson*

> Instead of being viewed as a rival, (foreign investment) ought to be considered as a most valued auxiliary, conducing to put in motion a greater quantity of productive labor, and a greater portion of useful enterprise, than could exist without it.
>
> Alexander Hamilton 1791

While these words of the first Secretary of the Treasury reflect the sentiment of the nation with respect to foreign investment for a major portion of the first century of United States history, it is clear that this mood no longer prevails. Indeed the recent interest in foreign investment as evidenced by the Foreign Investment Act of 1974 suggests that Americans have recently grown more skeptical of alien real estate ownership.1/ The slightest hint of land purchases with the "oil money" from the Arab nations merits local, state, and even national news coverage. Why the change in attitudes? What is the reason for foreign investment? What should be the policy with respect to alien ownership of property in the United States? It is hoped that the answers to these and other questions concerning foreign real estate investment will come into clearer perspective as the result of this historical survey of foreign investment in the United States.

Since it is helpful to examine policy in light of its historical background, the purpose of this paper is to present historical data on the flow of foreign capital into this country and to analyze the causes which lie behind the trends. Specific consideration will be given to alien investment in land and other real estate, but data availability will limit the conclusions which can be drawn from this experience. To the extent that such real estate investment is directly linked to foreign capital inflows, careful examination of these overall trends will shed light on the trends in alien land ownership.

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1/The Conference Board, Foreign Investment in the U.S.: Policy, Problems, and Obstacles (New York: The Conference Board, Inc., 1974), p. 3.

After definitions and an outline of causes of foreign capital flows, an historical overview of foreign investment in the United States from colonial times to the present will be examined. Attention will then focus on direct foreign purchases of land and other real estate. After examining the causes of the trend in foreign investment and the impact of various policies on these trends, conclusions will be drawn regarding

Causes of Capital Flows

In a general sense, profit maximizing individuals transfer their funds in international capital markets and purchase foreign real estate in an effort to capture a higher rate of return on their investments. These rate differentials are the result of four different influences: 1) the marginal productivity of capital or land may differ between countries, making the returns to that factor of production differ; 2) currency exchange rates may vary; 3) institutional factors may influence the expected rate of return on investments; and 4) commodity price differentials can induce trade.2/ The first two are self explanatory but the third and fourth need further elaboration.

Institutional factors can play an important part in the flow of capital especially in the case of real estate. In this context institutional factors refer to all social and political variables which might affect the ability of the owner to capture the entire rate of return on his asset. Wars or other political instabilities which induce what is often called "flight capital" are perhaps the most obvious examples. Since these conditions reduce the probability that the owner will be able to capture the full return on his investment, the expected value of any investment is thus lowered. Similarly, taxes and tenure conditions may also weigh heavily in the expected value calculation. Especially in the case of land, these latter two are likely to greatly influence investment decisions. In Europe, for example, even though land is quite scarce and hence valuable, insecure tenure conditions may induce investors to transfer their investments to the United States where conditions are more secure.

The influence of price differentials on capital flows is perhaps best explained by a current example. The recent energy crisis caused the price of oil to rise quite rapidly and forced the United States to import oil at much higher prices. To the extent that this higher priced imported oil was purchased with commercial credit, such transactions can be looked upon as loans to our country by the country

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2/For a detailed discussion of these factors see Lance E. Davis, Jonathan R.T. Hughes, and Duncan M. McDougall, American Economic History, The Development of a National Economy (Homewood, Ill.: Richard D. Irwin, Inc., 1965), p. 247.

exporting the oil. To complete this transaction, dollars must flow to the exporter of the oil, the exporter must trade his commercial credit for American commodities or with someone desiring such commodities, or the credit or dollars can be invested in the U.S. economy. The latter is apparently seen by many Arab oil producers as a viable alternative. Hence an initial trade for a commodity can result in an increase in foreign investment and alien ownership in the United States. A great deal of the capital flows to be discussed in the following section is the result of similar circumstances.

Capital Flows into the United States

As evidenced by the initial quote, foreign investment in our country was considered valuable during the colonial period and the first years of our nationhood. Indeed, it must be remembered that the first settlements were composed entirely of foreign capital, for the only true natives at that time were the American Indians. The original settlement at Jamestown in 1607 was the result of an English joint stock company organized for the purpose of earning a profit on its New World investment. As natural resources, including land, became relatively more scarce in Europe and especially in England, the prices of the resources and commodities produced therefrom rose. Under these circumstances, it is not at all surprising that private individuals as well as the government engaged in the exploration and exploitation of new parts of the world. With the abundant land in the New World, individuals could combine their labor and capital, and produce commodities which could earn them a handsome profit in European markets. Moreover, if you happened to be one of the companies fortunate enough to have a Crown granted monopoly on trade to the British North American colonies, the return on investment was higher yet. But in general, "during the first hundred years of North American colonization, economic conditions gave little encouragement to private land schemes. Land was too plentiful."3/

It was not until the quarter century before the Revolution that many land investment schemes began to turn a profit. Nonetheless, it is clear that during the colonial period British, Dutch, and French investments on the North American continent "were largely responsible for erecting the infrastructure that stimulated the country's economic development."4/

As productivity and development increased in the new nation, the proportion of foreign investment declined; nonetheless, capital flows from abroad continued to play a role in our growth process. The stage of the debate as to the importance of that role is captured in the following quote.

3/A.M. Sakolski, The Great American Land Bubble (New York: Harper & Brothers Publishers, 1932), p. 2.

4/The Conference Board, p. 5.

> Recently John Knapp has argued that overseas investment has played a most miniscule role in the development of any country, and that, among today's great industrial powers only the United States availed itself of large amounts of foreign capital. Moreover, Knapp suggests that even in the case of the United States, the transfers were not necessary to augment domestic accumulations, but were merely ways of overcoming the poor state of the American capital market. Recent research, however, has suggested that while foreign capital has never been a large proportion of total capital formation in the United States, it did make a substantial contribution to growth during certain short periods. That is, the availability of foreign capital made it possible to underwrite periods of very rapid expansion in the capital stock which would have been impossible on the basis of domestic accumulations alone.5/

While the significance of foreign investment is still debated, its rise in absolute magnitude is undisputed for the nineteenth century. Table 1 shows the aggregate foreign indebtedness for that century. During the first third of the nineteenth century, the flow of foreign capital into this country was relatively stable. The significant change noted in the ante-bellum period in the 1830's corresponds to the rapid rise in the building of America's transportation network of canals and highways. As many of these ventures failed, however, the level of capital inflows declined, only to be stimulated again in the 1850's by the expansion of the rail system into the American West. The immediate post-bellum era saw a near doubling of aggregate foreign indebtedness every 5 years, followed by a sharp decline in the late 1870's and a fairly steady rise to the end of the century. Most fluctuations for the entire period were closely linked to the business cycle in the United States.

A U.S. Department of Commerce study on "Foreign Business Investments in the United States" for the twentieth century6/ shows that such investment continued to grow with the economy. From 1900 to 1961, total foreign indebtedness grew from $2.5 billion to nearly $21.5 billion. From 1919 to 1961 foreign direct investment grew from $1 billion to over $7 billion; this includes a doubling in book value between 1950 and 1960. Even during the decade of the great depression, foreign long-term investments in the United States were able to increase slightly, with the majority of the increase coming in the form of foreign direct investment. The study concludes that "foreign direct business investments in the United States have risen substantially in the postwar

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5/Lance E. Davis, Richard A. Easterlin, William N. Parker, et al, American Economic Growth: An Economist's History of the United States (New York: Harper & Row Publishers, 1972), p. 315.

6/Samuel Pizer and Zalie V. Warner, Foreign Business Investments in the United States (Washington, D.C.: U.S. Department of Commerce, Office of Business Economics, 1962).

Table 1

Foreign Investment in the
United States (Net Liabilities)

1790-1900

(In millions of dollars)

1790	61
1800	83
1810	85
1820	88
1830	75
1840	261
1850	217
1860	377
1870	1,252
1880	1,584
1890	2,894
1900	2,501

Source: Historical Statistics (Washington: GPO, 1960), Ser. U 207, p. 566.

years, reaching a book value of over $7 billion by the end of 1961, compared with $3.4 billion in 1950."7/

It is interesting to note that during most of the period from 1919 to 1961, direct investments ranged between 25% and 35% of total long-term investment. Two exceptions are 1929 when this percentage fell to about 20%, and 1950 when it rose to over 40%. Furthermore, during the first six decades of the twentieth century, neither the distribution of foreign direct investment among the top four countries (United Kingdom, Canada, Netherlands, and Switzerland) investing in the United States, nor the distribution among industries showed any marked change.

Between 1962 and 1972 there was a dramatic doubling of foreign direct investment from $7 billion to over $14 billion. Again, the distribution among countries remained relatively constant but the shares invested in manufacturing and petroleum, increased from 37.9% to 50.3% and 18.6% to 22.6%, respectively. During recent years the momentum of direct investment has picked up to the extent that the inflow of this investment reached a record $2.1 billion in 1973, "compared to an inflow of only $160 million in 1972 and a net outflow of over $100 million in 1971."8/

Again it should be pointed out that the above data do not single out foreign direct investment in real estate, but it is certain that they do provide a proxy suggesting increases in alien real estate holdings throughout this century.

The Trend in Foreign Land Holdings

While a complete series on alien ownership of land in the United States does not exist, it is possible to illustrate the trends in that ownership with the bits and pieces of data which have survived. The importance of foreign real estate holdings increased throughout the nineteenth century, reaching its zenith around the turn of the century. The downturn in the relative importance is coincidental and consistent with America's switch from the role of a debtor to a creditor nation at that time.9/

7/Pizer and Warner, p. 1.

8/The Conference Board, p. 3.

9/In the following discussion foreign land ownership includes resident aliens though it is recognized that much of the current concern is with non-resident aliens. Historically it is difficult to separate the two and it is clear that resident alien holdings did have a significant impact on alien land holding legislation.

Colonial Period

In a certain sense all land ownership during the colonial period can be considered foreign. However, in the eyes of the colonial law which derived its origin from the mother country, and could not be contrary to the laws of England, alien owners were considered to be all those who were not British subjects. By the same token many British subjects were given special treatment through the granting of Crown monopolies which added to their incentive to invest in the New World. But the restrictions on other nationalities undoubtedly reduced their migration to colonial America. Disappointment certainly came to the landless European who accepted the costs of crossing the Atlantic in the hope of attaining a better life, only to find that he could not obtain title to land. For many, the only alternative was to become a tenant on another's land. Denization was another alternative but "came into disfavor with the Crown because of colonial liberality, especially after New York granted that status to a notorious smuggler, and in 1709 it sharply curtailed the authority of the colonial governors to issue letters of denization."10/ The ultimate method of obtaining the right to own land, therfore, was naturalization. However, this was difficult to obtain, since it required that the alien apply to the local legislature for a private act which gave him this status. Such a policy continued until 1740, when a general naturalization statute came into existence for the colonies.

Needless to say, such restraints discouraged the imigration of both alien individuals as well as alien capital to the New World, and for the colonists interested in development such restraints were most undesirable. "In colonies where the alien populations were relatively large, relief was sought through bills to quiet and confirm titles derived from aliens."11/ Opposition by the British government was strong and in 1773 "it ordered colonial governors to reject any alien title bill or naturalization measure their assembilies might pass."12/ The ultimate objection by the colonists to this and other acts came in the Declaration of Independence, which charged that George III "endeavored to prevent the population of these States; for that purpose obstructing the laws for Naturalization of Foreigners' refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands."

10/Charles H. Sullivan, "Alien Land Laws: A Re-evaluation." Temple Law Review, Vol. 36, 1962, p. 27.

11/Sullivan, p. 28.

12/Sullivan, p. 28.

With the approach of the Revolution, British investors in land began to liquidate their holdings, thus marking the end of extensive British holdings in what is now the United States.13/ The important lesson to be learned from this event in our history is that the security of property rights was and still is one of the prime determinants of investment in any asset. Prior to the Revolution the colonists felt that their property rights were threatened by the actions of the Crown, thus providing them with an incentive to revolt.

The New Nation

With the advent of the Revolution, British holders of property in the colonies became apprehensive about the security of that investment and abandoned many of their holdings. The end of the Revolution and the adoption of the Constitution brought the return of land speculators, including the British. "The American Commissioner to France during the war, before leaving that post, undertook to sell 'shares' in a company that claimed to hold title from the Indians to land later included in the states of Ohio, Indiana, and Illinois; and in 1783 was attempting to find buyers in London."14/

While the Constitution did not eliminate all disabilities on alien land tenure it did leave the control of land up to the individual state's law, which derived basically from English common law. While this body of law initially held to the feudal concept that aliens could not own land since they owed no fealty to the king, by the eighteenth century it had evolved to the point where such ownership was allowed, providing the land was purchased and not inherited. Even for the British subjects who now were aliens, this Revolution lifted many but not all restrictions. Especially important in this vein was an early nineteenth-century Supreme Court decision which emasculated Virginia's longstanding alien-inheritance and confiscation laws. These laws which forbade alien inheritance of land and allowed confiscation of loyalist property had been passed during the revolution and supported by the state judiciary.

With the disabilities removed, land offices began to spring up all over Europe, with their emphasis on the sale of smaller parcels to emigrants. The more wealthy Europeans were also encouraged to invest in American real estate. An example of these larger foreign investors is found in the Holland Land Company; during the 1790's this company purchased from Robert Morris, who owned extensive holdings in New York -- 3.5 million acres, or about one-seventh of that state's total area. The company was successful in reselling its land to incoming settlers, and earned

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13/Sullivan, p. 29.

14/Cleona Lewis, America's Stake in International Investments (Washington, DC: Brookings Institution, 1938, pp. 78-9.

a 5 to 6 percent rate of return.15/ During this same decade English, French, and Belgian investors were also buying land in the young nation. Investments such as that of London banker, Alexander Baring, who put more than a quarter of a million dollars into Maine lands, point to the fact that Europeans expected the land prices to rise with the westward movement of population.

From the above discussion of feudal land law, it is clear that "the historical background within which we are working started from the presumption that alien ownership was prohibited, unless expressly permitted by statute. In the course of the nineteenth century, this presumption was reversed in many states. Alien ownership was commonly assumed to be permitted, except insofar as statutes continued the prohibition."16/ Such acceptance of alien ownership further stimulated foreign investment in American lands.

Recalling from the previous section that the first half of the nineteenth century saw large increases in the inflow of foreign capital, it is not surprising that this period also witnessed large increases in foreign land holdings. Part of these increases were the result of capital which flowed in with European immigrants. Table 2 shows the occupations of immigrants as a percentage of total arrivals. The increase in the percentage of mechanics and farmers indicates that a growing proportion of foreign arrivals might be expected to own land. Other Europeans who remained in the old countries also purchased land in the United States, expecting to capitalize on the higher land values caused by their migrating countrymen.17/ In the 1830's, for example, large tracts of West Virginia land was being purchased by British investors for resale to immigrants.18/ While it is true that much of this immigration was due to conditions in Europe, it is also true that relative factor prices and policies favorable to immigration played a role. As land became more and more scarce in Europe, economic opportunities in the new nation increased. As had been the case from the very beginning of the colonies, the U.S. comparative advantage was found in the production and trade of commodities which used much land relative to other factors.

15/Sakolski, pp. 61 and 86.

16/Fred L. Morrison, "Legal Regulation of Alien Land Ownership in the United States," in an Interim Report to Congress, Foreign Direct Investment in the U.S., Vol. 2, (Washington, D.C.: U.S. Department of Commerce, Oct. 1975), p. XI-9.

17/Leland Hamilton Jenks, The Migration of British Capital to 1875 (New York: Alfred A. Knopf, 1927), p. 66.

18/Lewis, p. 80.

Table 2--Total Immigrants and
Occupational Distribution
1820-1855

Year	Total Immigrants	Occupation as % of Total		
		Labor	Merchants	Mechanics & Farmers
1820	8385	9%	25%	31%
1825	10,199	10	29	32
1830	23,322	12	25	41
1835	45,374	15	20	55
1840	84,066	22	12	64
1845	114,371	32	10	56
1850	310,004	38	5	54
1855	200,877	39	13	45

Source: Douglass C. North, The Economic Growth of the U.S. 1790-1860 (New York: W.W. Norton & Co., Inc. 1966), p. 98.

A second factor which contributed to the increase in foreign land holdings during the ante-bellum period was the failure of several U.S. banks. Many of these banks had credit with European investors, as they folded the Europeans were forced to accept land as payment for debts. Lewis captures the importance of these turnovers.

> . . . . The dissolution of the Bank of the United States in 1843, and the eventual distribution of its assets among its creditors, must have turned considerable amounts of land over to Europeans. In this way the Spanish Crown came into possession of land in Pennsylvania, later of importance in the history of the Atlantic and Great Western Railway. The failure of other banks at about the same time must have thrown many other pieces of land into the hands of European creditors, particularly British.19/

The major stimulus to alien land ownership in the United States, however, was provided by the railroad boom which began in the 1850's and was effective in opening the American West. Population pressure in the East was driving up land prices in that region. In his book, The Beef Bonanza, General Brisbin describes the situation in the East as follows.

> Often I hear city young men in the East say, "If I had only come here twenty years ago, I might now be a rich man. Land then sold for a few dollars a foot, while now it is worth as many hundreds or even thousands." So, too, the young farmer exclaims, "Land is so high, I can never afford to buy a farm. When my father settled here and bought, it was worth $10, $20, or $30 per acre, and now it is held at $100, and were I to buy a farm, and pay the purchase-money down, I could not more than raise the interest on the balance; therefore, I can never hope to own a farm of my own."20/

Indeed, speculation was still taking place in the West and with each day the uncertainty of settlement in that region decreased. Moreover, the railroads decreased the costs of transporting people and commodities into and out of the region. Combining these factors with the expectations that emigration from foreign sources would reach the hundreds of thousands,21/ land certainly appeared to be a good investment.

19/Lewis, pp. 80-81.

20/General James S. Brisbin, The Beef Bonanza (Philadelphia: J.B. Lippincott & Company, 1881), p. 15.

21/Brisbin, p. 16.

During the last half of the nineteenth century land was available to foreigners largely through property being sold by the land-grant railroads or through homesteading. Rich, level prairie lands and beautiful home sites could be had for $10 per acre. "Or, if the emigrant is too poor to buy, he can take up one, two, three, or four hundred acres, and if he will but live on them for five years, they are his and his children's after him forever."22/ Undoubtedly many emigrants took the latter course, but for the foreign investor not interested in settling in the West, the railroad lands made excellent opportunities for ownership. Promoting these sales of the American West was itself a big enterprise.

> . . . . As stated by the Liverpool Journal, Americans do not sit and wait for immigrants to come; they send agents to England "to tell us what is going on, and to show the better class of emigrants what opportunities American capital has provided for them in the West."
> These so-called agents of the West, these "unofficial ambassadors" . . . , constituted a small but articulate element in an otherwise reserved English society. Foremost among them were representatives of western American railroad companies and western state immigration commissionors and included--if a broad use of the word be permitted--were also Mormon missionaries, private land salesmen, professional lecturers, writers, travelers, and outright swindlers.23/

These efforts to promote land sales abroad were fruitful fairly early. In 1857 the Dubuque and Pacific Railroad contracted to sell 6 million acres to English investors "but when the sale was consummated the amount taken was reduced to 500 thousand acres, later subdivided and settled."24/

The success of the sales efforts continued into the 1880's when the Sioux City and St. Paul Road sold about 40,000 acres in Iowa to a London based land company who continued its purchases throughout the decade of the 80's, developing the land for tenant farming.

Railroad land was also transferred into foreign hands in conjunction with the road's stock and bonds. As an added incentive to purchase these securities, some lines offered land or shares in land companies to potential investors. Moreover, when claims against the road could not be covered with cash, land was offered as an alternative. An

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22/Brisbin, p. 18.

23/Oscar O. Winter, "Promoting the American West in England, 1865-1890," Journal of Economic History, Vol. XVI, No. 4., December 1956, p. 506.

24/Lewis, p. 81.

example of such a transaction can be found in the transactions of the Texas and Pacific Railroad. Of the 5.5 million acres which this road had been granted by 1880, 640,000 acres had been transferred to a trust for foreign claimants. In 1886 this amount increased when the road was forced to default on its bonds, and reorganized its debt by giving land-grant bond holders land which belonged to the railroad. Other railroads made their bonds directly convertible into land; the Northern Pacific, for example, made some of its bonds "convertible at 110 percent of face value into land priced at two and one-half dollars an acre."25/ For those who made the conversion in the 1870's, the transaction proved quite profitable, for by the 1890's the same land was selling for $40 to $60 per acre.

Alternative Investment

Railroads did not offer the only possibility for the investment of foreign capital in the West during the last half of the nineteenth century. State bonds, mortgage companies, and cattle ranches all offered alternative investments which were often related very closely to land ownership.

When states defaulted on their bonds, often their only alternative for payment of debts was land. Alabama, for example, in 1876 defaulted on its 8 percent bonds issued in 1870 in London, and elected to exchange them for land. The Alabama Coal, Iron, Land, and Colonization Company of London, which was established to manage the lands so acquired, proved to be a very profitable venture. "Dividends paid by the holdings, range from 25 percent in 1909 to 75 percent, with a bonus of 50 percent in 1917. Meanwhile, the company's remaining acreage amounted to 460,225 acres in 1914; reduced to 447,023 acres in 1918."26/ Similarly Texas paid for the construction of its state capital building by giving the English construction firm 3 million acres, two-thirds of which were later sold for $7 million.

Farm-mortgage firms also played an important role in foreign land investment during the last three decades of the nineteenth century. Westward expansion by residents of the East, as well as emigrants from Europe, placed an increasing demand on the frontier credit market. Between 1875 and 1900 Iowa and Kansas alone saw the creation of nearly 250,000 new farms. A large portion of the land for settlement in the West was available through homesteading, but much was also purchased through the land market and thus often required credit. Since the American capital market seemed incapable of meeting the demand for this credit, foreign mortgage firms, especially from Great Britain, stepped in to fill the gap. While investment in this manner did not necessarily involve direct land ownership, these firms did influence the land market and often did obtain direct ownership, either through default or purchase.

25/Lewis, p. 83.
26/Lewis, p. 83.

Between 1875 and 1895 there were at least 11 Scottish and 13 English mortgage and land firms investing in Iowa and Kansas, and about 12 Dutch mortgage banks making loans in the mid-western and western states.27/ Records of their direct land holdings are sketchy but the following are examples of direct real estate purchases: 1878, Dundee Land Investment Company (Scottish) purchased 10,000 acres in northwestern Iowa; 1883, Close Brothers and Company (English) owned 70,000 acres in Iowa, which was to be sold or rented to British immigrants; 1885, Kansas Land Company (English) purchased 100,000 from the Kansas Pacific Railroad; and 1886, Second Kansas Land Company (English) purchased 150,000 acres from the SanteFe Railroad.28/ Total investment by 7 British mortgage firms registered in 1874 and still in existence in 1914 totaled $45 million. "It was estimated that in 1917 British loans on southern cotton and farm lands amounted to about 110 million dollars. . . ."29/

As will be discussed below, figures such as these caused much concern on the American frontier over alien investment in land; but what was the relative magnitude of this investment? McFarlane's study of British investment in Iowa and Kansas during the last quarter of the nineteenth century reaches the following conclusion.

> . . . . Using 1890 as a sample year, we estimate that foreign funds financed at least 1 percent of the value of outstanding Iowa farm loans and 2 percent of Kansas land mortgages. Even if one arbitrarily doubles these percentages, the conclusion remains inescapable: British investment in Iowa and Kansas farm credit was relatively insignificant and only in a minor way supplemented the principal local and eastern credit sources. It would seem that argarian leaders of the period were mistaken in their contention that alien investment was subverting the farm credit system. The question of British land ownership in these states is much more difficult to treat . . . . It would seem, however, . . . Britons--did not nor did they intend to--build permanent estates in either state.30/

Investment in the western cattle industry provides another opportunity for foreign purchases of land. During the 1860's England suffered a serious setback in her own cattle industry. With the herds of continental Europe ravaged by anthrax, Britain quarantined the island only to have the disease enter through Ireland. With tens of thousands of cattle destroyed at a time when demand was rising, prices soared. At this time, many accounts were being written of the fortunes to be made in the American cattle industry. The result was a great influx of alien capital into the American West.

27/Lewis, p. 86 and Larry McFarlane, "British Investment in Midwestern Farm Mortgages and Land, 1875-1900: A Comparison of Iowa and Kansas," Agricultural History, Vol. XLVIII, No. 1, January 1974, pp. 183 and 188.

28/McFarlane, pp. 188-189.

29/Lewis, p. 86.

30/McFarlane, pp. 196-197.

As long as land was abundant on the Great Plains, the investment in land remained low, since the cattle companies could use the public domain. Squatters, sheepmen, and smaller ranchers were also moving onto the Plains as the British were making their investments. "The era of free and unchallenged use of millions of acres of public land, which had characterized the profitable period of the 'cattle kings' in the late sixties and seventies, was rapidly drawing to a close. Despite carefully drawn contracts, the priority rights supposedly conveyed over large tracts of public land to the British companies were invalid."31/ As a result, all ranching enterprises including those owned by aliens were forced to purchase, rent, or lease the land they wished to use for grazing. Table 3 gives some idea of the size of some of the foreign ranch holdings in 1885. To augment these holdings, several cattle operations attempted to control between 100,000 and 300,000 acres of public land by purchasing small tracts and grazing the stock on adjacent property. "Clashes with squatters, sheepmen, and introducing cattle graziers resulted in strong anti-British feeling and outright attacks against absentee ownership and operation."32/ The final result of the clashes was that the U.S. government was forced to intervene; illegal fences had to be removed, indictments were returned against several ranchers, and fines were assessed against the illegal use of public domain. These actions forced many foreign ranches to liquidate, "but the stronger organizations--largely Scottish--set out to purchase and lease tracts aggregating, in at least two instances, three quarters of a million acres each."33/ In summarizing the experience of alien investment in the American cattle industry, Herbert Brayer concludes:

> . . . it appears that short-term investors in British-American ranching companies lost approximately $25,000,000 between 1880 and 1910. Despite this financial disaster, the contribution of this foreign enterprise in the West was incalculable. As they had already done in railroading, mining, milling, and agriculture, the British investor in the range-cattle industry had made a material contribution to the economic development of the American West.34/

31/Herbert O. Brayer, "The Influence of British Capital on the Western Range-Cattle Industry," The Tasks of Economic History, Supplement IX, 1949, p. 95.

32/Brayer, p. 95.

33/Brayer, p. 96.

34/Brayer, p. 98.

Table 3--Examples of British Cattle Company Holdings, 1885

Company	Acres Owned	Acres Leased
Prairie Cattle Company	156,862	32,278
Swan Land & Cattle Co., Ltd.	578,862	not available
Texas Land & Cattle Co.	388,174	520,966
Matador Land & Cattle Co.	424,296	256,367
American Pastoral Company	300,692	208,891

Source: Herbert O. Brayer, "The Influence of British Western Range Cattle Industry," The Tasks of Economic History, Supplement IX, 1949, p. 95.

Appearance of Restrictive Statutes

It is evident from the above discussion that the last half of the nineteenth century saw the largest amounts of alien investment in American land to that date. For the few years immediate to World War I, alien land companies owned some 30 to 35 million acres in the United States.35/ During this same period, the United States also saw tremendous increases in the inflow of foreign capital in general. As a result, during the last decades of the century, concern began to arise over increasing foreign control of American assets.

In the West, opposition to the foreign landlord manifested itself in the form of anti-alien landowning legislation. Alien ownership was such an important issue in the Granger movement that it was even included as one of the planks in the Populist platform of 1892. Much of this opposition can be traced to William Scully, an Irishman who had acquired large amounts of land in the mid-western states. "In the four states of Illinois, Missouri, Kansas, and Nebraska, Scully had amassed an empire of land amounting to 220,000 acres at a cost to him of $1,350,000."36/

35/Lewis, p. 85. Also see "Ownership of Real Estate in the Territories," Report from the Committee on Public Lands, House of Representatives, 49th Congress, 1st Session, Report No. 3455, p. 2, where it is reported that in 1886 30 million acres were held by aliens.

36/Paul Wallace Gates, Frontier Landlords and Pioneer Tenants (Ithaca, New York: Cornell University Press, 1945), p. 43.

While his tenant policies were perhaps no worse than those of other landlords, the fact remains that Scully was both an absentee as well as an alien landlord. His policy of cash rents and of tenants paying the taxes on his land, combined with the size of his holdings, provided a rallying point for the anti-alien landlord legislation. A major point in the debates over the Alien Land Act of 1887 was the fear that American farmers would become "servants of distant masters uncomprehending of the rights and needs of Americans."37/

By 1884 all the national parties were taking stands against alien land ownership, but it was the reaction to mid-western Scullyism which brought the first legislation. The first action occurred on June 16, 1887 when the Illinois governor signed bills which prohibited non-resident aliens from acquiring real estate and prevented alien landlords from requiring tenants to pay taxes on their lands. Nebraska followed suit by prohibiting alien land acquisition, as did Wisconsin, Minnesota, Colorado, Iowa (1888), Idaho (1891), and Missouri (1895). Kansas simply passed an amendment to its constitution that permitted legislation prohibiting alien ownership of land.

In all, thirteen states approved measures which restricted or banned further foreign acquisition of land in the United States. Even the U.S. Congress responded by passing a law in 1887 which restricted ownership of land in the territories to American citizens. In light of all this legislation it is hardly surprising that Scully and undoubtedly other alien owners took out American citizenship while others reduced their U.S. investments.

As conditions in the agriculture sector improved in the 1890's and Populism died out, opposition to alien land ownership also waned. Many states modified their stringent laws, but this did not mean that the negative feeling regarding alien landlordism would not reappear.

Japanese investment in lands along the west coast of the United States brought renewed concern over alien land ownership and a renewed round of legislation. In 1882 the Chinese Exclusion Act forced the Chinese from the fields, leaving over a half-million acres of farmland in California out of cultivation.38/ California like other states relaxed her restrictions during the last years of the nineteenth century and early years of the twentieth. Nonetheless, the impact of the Chinese Exclusion Act made itself felt by keeping the number of Chinese residents of California relatively constant at slightly more than 132,000 between 1882 and 1910. The number of Japanese inhabitants increased from an

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37/Detlev F. Vagts, "United States of America's Treatment of Foreign Investment," Rutgers Law Review, Vol. 17, 1963, p. 392.

38/Carey McWilliams, Factories in the Field (Boston: Little, Brown and Company, 1939), p. 105.

estimated 86 in 1882 to 72,156 by 1910. The 1920 census reported the California population to be 3,437,609, including 70,196 Japanese. But according to the California State Board of Control and local Japanese authority the Japanese population in California exceeded 87,000 in the census year.39/ At the same time their influence in Hawaii was being noticed; of the 255,912 population on the islands in 1920, almost half (109,274) were Japanese. Since a majority of these Japanese inhabitants were engaged in agriculture, it is hardly surprising that they gained large amounts of land. By the 1920's, about 40,000 Japanese were engaged in agriculture in California alone; by 1919 they cultivated 458,056 acres through individuals or corporations; this was an increase of 412.9 percent over 1909.40/ In some counties this cultivation amounted to between 50 and 75 percent of the rich irrigated lands.41/ By 1919 Orientals had colonized and occupied nearly 16 percent of all land under irrigation in California.42/

In light of these statistics, it is hardly surprising that the second wave of restrictive statutes began in California. "That state took an early lead to curb landholding by the Japanese, first in 1913 and again in 1920, when it approved by an overwhelming margin an initiative measure that became the model for anti-Japanese legislation throughout the Pacific Coast and Rocky Mountain states and extending as far east as Delaware."43/ To avoid charges of overt discrimination the California law prohibited land ownership by aliens ineligible for citizenship, thereby excluding the Oriental race. The act even went so far as to forbid cultivation under a cropping contract. The constitutionality of this act was first upheld by the U.S. Supreme Court in 1923 and reinforced in a series of related decisions. While this anti-Japanese attitude slackened during the depression, the outbreak of World War II revived the concern and the legislation, as Arkansas, Utah, and Wyoming joined the list of states with restrictive laws.

Except for Hawaii44/ where Japanese investment still plays an important role in real estate investment, there have been no major instances of alien investment in the United States other than the California experience in the early decades of this century. As a result, the interest in restriction of alien land ownership has waned. This, combined with

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39/Charles Forest Curry, Alien Land Laws and Alien Rights, House of Representatives Document No. 89, 67th Congress, 1st Session, p. 21.

40/Jeremiah W. Jenks and W. Jett Lauck, The Immigration Problem (New York: Funk & Wagnalls Company, 1926), p. 246.

41/Curry, p. 20.

42/For a map of Oriental land holdings in California in 1919 see Jenks & Lauck, p. 248.

43/Sullivan, p. 33.

44/For a discussion of recent foreign investment in Hawaii see Karl Gertel, "Hawaii's Experience in Foreign Real Estate Investment 1972-1975," in this volume.

the 1948 U.S. Supreme Court decision which struck down the "eligibility for citizenship" test, and the doubts of several justices regarding the validity of state alien land laws, led many states, including California, to repeal or at least relax their restrictions.45/ With the end of the World War II and the court findings of unconstitutionality, "interest in this kind of restriction died out, and the process of eliminating racial discriminations in matters of land tenure began."46/

Conclusions

Throughout the course of our nation's history the pattern of alien landholding and the policy response by government has varied widely. During the colonial period the mercantilistic policies of the British restricted the inflow of foreign capital to a certain extent. But immediately following the Revolution the new nation pursued a policy which encouraged investment by aliens. This policy soon allowed even British investments. The effectiveness of these policies is witnessed by the fact that throughout the nineteenth century the inflow of foreign capital increased with a large part of this increase going into land investments. The transportation sector was an important factor in attracting such real estate investments, but when the volume of these investments reached a high level as they did in the latter decades of the nineteenth century, restrictions on alien landholding began to appear. Concern that the best farm lands would all be taken by aliens and lost to citizen farmers led the Populists to rally for this cause. Similarly the California farmers joined to restrict the encroachment of the Orientals into their state and the rest of the nation. During the first half of this century, alien land investment waned, as did the interest in restrictions.

From this survey of alien land ownership in the United States, it should be evident that such investment does have positive aspects. During much of our early period, the undeveloped state of domestic capital markets forced us to rely more heavily on foreign sources. In the cases of default on loans where land was transferred into alien hands, the process might be thought of as an early and informal type of "foreign aid." The development of our great land mass and the accompanying transportation system also owes much to alien investment. And in more recent times including the present, such investment can play an important role in absorbing foreign-owned dollars. The inflow of OPEC oil dollars provides a case in point. These are but a few of the benefits from alien land ownership.

45/Fred L. Morrison and Kenneth R. Krause, State and Federal Legal Regulation of Alien and Corporate Land Ownership and Farm Operation, issued by Economic Research Service, U.S. Department of Agriculture, Agricultural Economic Report No. 284, pp. 14-15.

46/Sullivan, p. 34.

In the past, "restrictionism seems to have been a calculated policy in only a few cases, and most anti-alien legislation found acceptance only in times of strong public emotion."47/ Future policy should benefit from the lessons of the past and consider the positive as well as any negative aspects of alien land investment.

47/Sullivan, p. 34.

TRANSNATIONAL CONVEYANCING

Barlow Burke, Jr.*

The Property Rights of Aliens and Native Peoples

At common law, no alien could take a freehold in real property since he was considered not to have "seisin," or possession responsive to civil authority. 1/ Our Republic, however, established its societal life on the premise that citizenship depended, not on the holding of a blood relationship with past citizens, but on an individual's separate declaration of loyalty and a renunciation of past allegiances. This required a modification in common law doctrines so that aliens, 2/ though not permitted to take land by statutory inheritance or operation of law, could acquire land by a conveyance, although the alien purchaser's title was without the "capacity to hold against the state." 3/

This rewording maintains the common law prohibition only when and if the civil authorities choose to exercise preemptive powers, which was not surprising for a nation wishing to encourage immigration in its early years. The alien was given incentives to immigrate. He could

> buy and sell real property by conveyance or devise it;
>
> defeat escheat to the state by becoming a citizen before the state's right to preempt his rights were adjudicated and perfected by a final judicial decree; 4/

1/ P. Bayse, Clearing Land Titles §280 at 596 (2d ed., 1969); 2 Am. Jur., "Aliens," §28-29 (1936). Indeed, no one could hold a freehold estate without such responsiveness because, by definition, a freehold gave seisin to its possessor. G. Sharswood and H. Budd, 1 Leading Cases in the Law of Real Property 501 (1889).

2/ Inglis v. Sailors' Snug Harbor, 28 U.S. (3 Pet.) 99, reprinted in G. Sharswood and H. Budd, supra n. 1, @ 424; Id. @ 497-98 states the rules under which American colonials were determined to have elected United States citizenship. A. Bickel, The Morality of Consent, 29-54 (1975).

3/ 3 Am. Jur.2d "Aliens," §13, p. 859 (1962).

4/ Escheat was one of the few in rem actions to which real property was subject. Hamilton v. Brown, 161 U.S. 256 (1896).

*/ Professor of Law, American University, Washington, D.C.

> prevail against private parties asserting the preemptive rights of the state. 5/

Sometimes these rights were restricted to resident aliens or those with a bona fide intent to become citizens. Aliens still could not own realty acquired through descent--that is, inheritance based not on a will but on a statutory scheme of intestate inheritance. This was a throw-back to the idea that the rights of citizenship turned on questions of bloodlines, for at the turn of the century, it was said

> As the alien could not take by descent, he was regarded as having no inheritable blood. If he died, the land went immediately to the State and a title would not be traced through him. Thus if a citizen died, leaving his only relative a grandson, also a citizen, who was the son of an alien, he could not take. 6/

But even these last legal disabilities were lifted in many states, particularly when the jurisdiction was initially settled. 7/ Then legislatures encouraged the in-migration of aliens by enacting statutes allowing some of them to hold indefeasible titles.

5/ Id.

6/ Beers, "Real Property," in Yale L. Fac., Two Centuries in the Growth of American Law 48, 54 (1901). For recent cases, see In re Johnson's Estate, 16 N.C. App. 38, 190 S.E.2d 879 (1972); DeTenorio v. McGowan, 364 F.Supp. 1051 (D.C. Miss., 1973).

7/ L. Friedman, A History of Am. L. 209-10 (1973):

> Too many people played the land market, as their descendants played the stock market; an expanding population meant rising prices of land; this implied an open-door policy for aliens, and alien investment. The absolute disability of aliens faded into local compromises. As early as 1704, a South Carolina act, praising resident aliens for "their industry, frugality and sobriety," for their loyal and peaceable behavior, pointed out that they had acquired "such plentiful estates as hath given this Colony no small reputation abroad, tending to the encouragement of others to come and plant among us," and granted them full rights to acquire property by gift, inheritance, or purchase. An Ohio law (1804) made it "lawful" for aliens who became "entitled to have" any "lands, tenements or hereditaments" by "purchase, gift, devise or descent," to "hold, possess, and enjoy" their lands, "as fully and completely as any citizen of the United States or this state can do, subject to the same laws and regulations, and not otherwise. (Fns. omitted.)

See also, 3 Am. Jur., "Aliens," §30, p. 876 (1962).

After settlement, these statutory privileges were sometimes revoked. Two successive, superseded statutes controlling such matters for the District of Columbia are illustrative.

> Any foreigner may, by deed or will hereafter to be made, take and hold lands within that part of the said Territory which lies within this State in the same manner as if he were a citizen of this State; and the same lands may be conveyed by him and transmitted to and inherited by his heirs or relations as if he and they were citizens of this State: Provided, That no foreigner shall, in virtue thereof, be entitled to any further or other privilege of a citizen. Md. P.L., 1791, 86, an Act of the State of Maryland concerning the Territory of Columbia and the city of Washington (December 19, 1791). (The objective of the foregoing legislation was stated in its preamble, "that allowing foreigners to hold land within the said Territory will greatly contribute to the improvement and population thereof.")

> It shall be unlawful for any person not a citizen of the United States or who has not lawfully declared his intention to become such citizen, or for any corporation not created by or under the laws of the United States or of some State or Territory of the United States, to hereafter acquire and own real estate, or any interest therein, in the District of Columbia, except such as may be acquired by inheritance. D.C. Code §§396-97 (1907). 8/

Provisos were inserted thereafter for land held under existing treaties, legation land and diplomats' residences.

With aliens' property rights, as with conveyancing generally, state law controls unless a federal interest is asserted. 9/ Thus states permitted aliens to hold indefeasible interests in realty taken by descent, and permitted tracing titles 10/ through aliens. Often residency, an intention to become a citizen 11/ or acreage limitations 12/ were conditions of these rights. One state restricted aliens to village land.13/

8/ W. Tindall, Origin and Government of the District of Columbia 16 (1907); see also Johnson v. Elkins, 1 D.C. App. 430 (1803).

9/ People v. Compagnie Generale Transatlantique, 107 U.S. 59 (1876); G. Sharswood and H. Budd, supra n. 1 @ 510-12; contra, State v. Boston Concord and Montreal R.R. Co., 25 Vt. 433 (1853).

10/ See text at n. 6 supra.

11/ See infra at n. 35.

12/ See infra at n. 34.

13/ Semrad v. Semrad, 170 Neb. 911, 104 N.W.2d 338 (1960).

In individual conveyances, these policies were given effect in more specific legal rules. Neither party to a land contract or deed was given the right to rescind on the ground that the other was an alien, 14/ except where a statute on the subject of alien rights was violated. Even then, the alien could recover any deposit or payments if he had entered the transaction innocently. 15/ The validity of the title in a third party purchaser acquired from an ineligible alien was in dispute for much of the nineteenth century; 16/ often it depended on the alien's good faith in his original acquisition, 17/ but was upheld in the majority of cases.

Native American "aliens" were governed by different rules. In some states, absent statute, an Indian had no capacity to convey realty inter vivos. 18/

Collectively, an Indian tribe could not impede the oncoming wave of settlers over its lands. Its title did not take precedence over the location of Treasury warrants 19/ or townsites 20/ on tribal lands, even when the white settlements came before the cession of the Indian title to the United States. Although the government had a duty to extinguish Indian claims in lands under government patent, 21/ the United States had superior title by conquest; 22/ it owned the fee before cession and could convey a patent subject to it. 23/ These opinions contain many statements of preference for the "settled" uses of land as opposed to the nomadic uses of the Indians 24/ and, since

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14/ Hepburn v. Dunlop and Company, 14 U.S. (1 Wheat) 179 (1816); G. Sharswood and H. Budd, supra n. 1 at 501-03.

15/ 3 Am. Jur.2d "Aliens," §16, p. 864 (1862).

16/ Oregon Mtge. Corp. v. Carstens, 16 Wash. 165, 47 P. 421 (1896); Fairfax v. Hunter, 7 Cranch 603 (dicta); Scanlan v. Wright, 30 Mass. (13 Pick.) 523, 25 Am. Dec. 344 (1833).

17/ See generally, 3 C.J.S.2d, "Aliens," §16-30, pp. 800-16 (1973).

18/ Murrey v. Wooden, 17 Wend. 531 (N.Y. 1837); contra, Colvord v. Monroe, 63 N.C. 288 (1869); cf. U.S. v. Ritchie, 58 U.S. 525 (1854).

19/ Marshall v. Clark, 4 Call. (Va.) 268 (1791).

20/ Village of Mankato v. Meagher, 17 Minn. 265 (1958).

21/ Veeder v. Guppy, Wisc. 1854, 3 Wisc. 502.

22/ Johnson v. McIntosch, 21 U.S. (8 Wheat) 543 (1823) (Marshall, C.J.)

23/ Ganies v. Hale, 26 Ark. 168 (1870).

24/ See Shipley, "A Summary History of Federal Land Policy" in G. Lefcoe, Am. Land Law 14-15 (1974):

> Americans in the nineteenth century were too idealistic to justify their conquests merely by force of arms, and they turned instead to an argument that was based on the highest use of the land. The rationale for dispossessing the Mexican landholders was that they were slow to accept change and were thus inefficient in their cultivation of the land; Yankee entrepreneurial ability would render the land much more productive. The young Richard Henry Dana, describing the magnificent ranches of Californios (cont.)

cession was the only method of sale open to the tribes 25/ under applicable statutes, native American "aliens" were only permitted to convey their lands by one-sided if not forced sales. 26/

Federal Treaties and State Powers

At its beginning and during its economic development, this country was a magnet for foreign capital. The Jamestown Colony was a venture financed by a private company. The Louisiana Purchase was closed with loans from British and Dutch interests. The Erie Canal was partially financed by British loans. The Bank of the United States, state banks, turnpikes, bridges, railroads--indeed most of the financial and transportation infrastructure of our economy--was built with foreign money.27/

This foreign capital was often a source of conflict between federal and state law. An alien's right to hold real property was early found to be a proper subject for the treaty-making powers of the federal government. 28/ Once made and ratified, a treaty becomes the law of the land and the courts are without power to qualify it. 29/ Where a treaty and state law conflict, it is the state law which, under the Supremacy Clause and Foreign Relations Power of the Federal Government in the United States Constitution, must yield. 30/ To gain a treaty's protection, however, the alien must be a subject of the country with which the United States concluded the treaty and must plead the treaty as a defense to state law. 31/

24/ cont. in the 1830's often stimulated his imagination with the thought of how bountiful this land could be if only hustling Yankees were in charge. Americans took even greater pains to develop this 'higher use' rationale against the Indians. In contemporary discussions and court cases involving Americans' rights to displace the Indians, the issue was usually presented as an irreconcilable confrontation between a tribe of nomadic hunters and a society of husbandmen, with the husbandmen winning simply because they were clearly a more advanced form of social organization. The crucial center of the justification for taking this land from its present holders was not that American social practices were superior to those of the Mexicans and Indians, but rather that farming and industry were more productive uses of the land than ranching and hunting."

25/ The Osage Nation v. United States, Ct. Cl. 1951, 97 Fed.Supp. 381.

26/ Holden v. Joy, 60 U.S. (19 How.) 366 (1872).

27/ Comment, "Foreign Investment in the United States: Is America for Sale?" 12 Hous.L.Rev. 661, 662, and fns. therein. See also, Statistical Abstract of the United States, 1963, at 857 (Table No. 1194). Alien mortgages were early protected by equity. Craig v. Radford, 16 U.S. (3 Wheat) 594 (1818).

28/ 3 Am.Jur.2d "Aliens" §14 at 680 (1962).

29/ Id.

30/ Id.

31/ Owings v. Norwood's Lessee, 9 U.S. (5 Cranch.) 344 (1809); Henderson v. Tennessee, 51 U.S. (10 How.) 311 (1850).

Once ratified, a treaty's effectiveness relates back to the date of its signing where the rights of a foreign government are involved, but where individual rights are involved, there is no relation-back and the treaty is effective only upon ratification. Rights arising in individuals under a treaty are not extinguished by abrogation of the document.

So the right of an alien may be controlled initially by state statute,32/ but expanded by treaty. This does not mean, however, that individual states may not restrict the rights in real property which aliens may hold. 33/ Residency requirements on ownership have long been considered no violation of constitutional limitations on state power. 34/ Similarly, an intent to become a naturalized citizen has been held to be a reasonable classification of aliens. 35/

Investment Goals and Strategies

During the period 1960-74, the volume of direct foreign investment in the United States has increased dramatically. 36/ Favorable currency

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32/ The validity of state regulation was sometimes found in the legal maxim (of which more later) that the law of the situs of the property controls a question of land titles in an interstate or multi-jurisdictional transaction. 3 Am.Jur.2d, "Aliens" §15 at 861.

33/ Oyama v. California, 332 U.S. 633; Porterfield v. Webb, 263 U.S. 225 (1923); Terrace v. Thompson, 263 U.S. 197 (1923); Frick v. Webb, 263 U.S. 326 (1923); Toop v. Ulysses Land Co., 237 U.S. 580 (1914); see also Annot., 92 L.Ed. 295; Oregon Mtge. Corp. v. Carstens, 16 Wash. 165, 47 P. 421 (1896).

The trend of these cases is toward a closer scrutiny of laws discriminating against resident aliens and requires that a state have a compelling interest (rather than a rational basis) for such laws. See In re Griffiths, 413 U.S. 717 (1973) (holding restrictions on Bar membership as to resident aliens unconstitutional); Sugarman v. Dougall, 413 U.S. 634 (holding blanket disqualification of aliens from public employment in New York State government unconstitutional); Graham v. Richardson, 403 U.S. 365 (1971) (granting welfare to resident aliens); cf. DeCanas v. Bica, --- U.S. --- , 96 Sup. Ct. 933 (1976).

34/ Ill. Rev. Stat. ch. 6, §§1-2 (alien may purchase land, but must dispose of it within six years); Iowa Const. Art. 1, §22 (resident aliens may acquire land within city or town limits and may buy only 640 acres beyond such limits).

35/ Porterfield v. Webb, 263 U.S. 225 (1923); see Minn. Rev. Stat. §500.22-1.

36/ Statistics are hard to obtain and evaluate. Committee on Foreign Affairs, United States House of Representatives, 93d Cong., 2d sess. "Foreign Investment in the United States: Hearings before the Subcommittee on Economic Policy," (Jan. 29, Feb. 5, 21, 1974) at 209 (Table 4). The United Kingdom and Canada appear to be the source of over half of this investment, only a small part of which is investment in real property. This is misleading, as a Canadian corporation may be controlled by the nationals of other countries, and the low state of the (cont.)

exchange rates--particularly the recent devaluation of the American dollar--a growing sophistication on the part of foreign firms desiring access to the United States' markets, and investors' uncertainty over future United States trade policies, has reportedly spurred this trend.37/ It remains true, however, that investments abroad by United States firms far exceed the direct investment of all types by foreigners and foreign firms in the United States; 38/ further, much of the current increase springs from the reinvestment in the United States of money already earned by foreign businesses here. 39/ Large firms in concentrated industries account for much of this increase. 40/ Their land purchases are only a sidelight of their industrial acquisitions. Dollar reserves held abroad have also accelerated this investment. Over the course of the last 30 years, the tremendous credits built up during World War II in international accounts in favor of Americans have dwindled and currently some foreign direct investment represents a draw on the reserves of American dollars held abroad. Alternative investments become more expensive as the dollar is discounted and transaction costs involved in converting dollars into other currencies rise.

Dollar reserves have been invested in real property (the amounts involved are uncertain) to hold a stable, relatively non-depreciable, asset in a steadily rising market. 41/ American land is relatively cheap when compared with other countries.

Investors from different countries may have various goals, however. First, they may desire escape from a currency plagued by inflation, political instability, or high discounts in international trade. 42/ Conversely, the relatively low rates of inflation, American political stability together with the tradition of free enterprise for real estate, and the recent upward revaluation of some foreign currencies coupled with the long-term strength of the United States dollar, make American investments appear desirable. Relative to other types of direct investment here, land ownership is control of a capital residual

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36/ cont. British economy makes foreign takeovers of British firms increasingly likely. Japan monitors the movement of its money out of the country. In the two year period, 1972-74, Japanese invested $47,000,000 in United States realty, in 255 government approved transactions, most in Hawaii and Southern California; 80% of the investors purchased condominiums. Id. at 41 (testimony of N. Snitt, U.S.-Japan Trade Council).

37/ Id. at 202.

38/ Id. at 204.

39/ Id. at 206.

40/ Id. at 219.

41/ The monetary reserves of oil-producing nations--based on a depreciating, wasting asset--thus are converted into a stable, non-depreciating income -producing source of wealth that will last longer than the oil income.

42/ Wealthy Latin American investors reportedly have such motives, although Latin America accounts for only 2% of foreign direct investment in the United States. Latin America, however, traditionally regards land as a good investment. Id. at 210.

not easily affected by economic or political change. Second, investment in American real estate may have sprung from specific jurisdictional juxtapositions, as in the situation of British Columbians investing in land in the State of Washington; restrictive land use controls in Canada have driven Canadians across the border to invest in American recreational properties. 43/ Third, investors may seek the benefit of future markets in American food, fiber, and natural resources. 44/ One observer presented the following as a reasonable objective:

> [P]rincipal investment criteria include established present value, likely appreciation over the next few years and, if possible, current income to meet interest and operating expenses together with a return of 8-12% per annum on invested capital. 45/

This general statement of investors' objectives has several implications in the present context. Several years ago, foreign investors in American real property found that lack of information about real estate markets led investors to use national statistics as a base for comparison with regional figures. 46/ Those regions with high rates of appreciation in realty values attracted much initial interest. Also, these investors wanted to place money in regions in which Americans had found investments profitable. Thus the Southeast, particularly the Atlanta metropolitan area, and coastal land were the center of attention. But these areas had other advantages as well: information was available on recent land prices in Atlanta through a private reporting service so that investors could readily determine if the selling price was indeed comparable to the market rate. Orlando, Florida is another metropolitan area in which a private company offers a similar service. One merchant banker reports seeing the resulting maps of the Orlando area in a Dutch merchant banking house. The availability of information thus seems to encourage foreign investment (and probably any investors' interest for that matter).

As foreign investors sought to emphasize proven investments in proven markets in this country, they also ignored the fact that percentage appreciation in value might not represent the largest absolute, dollar-value growth. Percentage statistics can misallocate investment whose objective is maximum profitability of a project.

43/ Kellogg, "The Canadians are Coming," Nation (June 14, 1975), at 722-724.

44/ Rothschild, "A Reporter at Large: Short Term, Long Term," The New Yorker (May 26, 1975) at 40, 43.

45/ Forry, "Planning Investments from Abroad in United States Real Estate," 9 Inter. Law. 239 (1974).

46/ The following discussion of investment strategies is based on interview memoranda, on file with author.

Seeking stable present value as well, early investors rarely looked to construction and development participations, but rather for land with existing improvements. Criteria for their investments can be expressed in a ratio of purchase price to replacement cost. A building selling for a price based on its initial cost but even more costly to replace would thus be attractive. A decision to purchase such a building is premised on the resale market lagging behind the market for newly constructed buildings and on a low depreciation rate for the older structure. This means that it should have been built within a decade or so ago, so that little or no redecoration or refurbishing is needed for the fixtures to look up-to-date.

The criteria of low price/replacement ratios with a low rate of depreciation can be transposed into mortgage terms when an investor starts to think about financing. Here, the recent increases in interest rates and loan charges indicate that with mortgages too, there may be an advantage in buying out the vendor's equity and assuming the existing mortgage. The same investment criteria are at work here: the transaction costs involved in acquiring the mortgage--by a purchase of the underlying equity--are low relative to the cost of replacing the older mortgage in the present capital market. This may be one reason why few foreign investors enter our capital markets (of course, unfamiliarity with them and their high loan/value ratios may be others) and why the cash component of their purchases is greater than it is with domestic investors.

Decentralization of this investment, away from high-growth regions of the country such as the Southeast and the Southwest, can be expected for the future; the movement of investors' funds to mid-size metropolitan areas is thought to present attractive investment possibilities. Cities like Columbus, Ohio; Indianapolis, Indiana; and Rochester, New York, are examples. These cities have not overbuilt their commercial markets. Minneapolis, Minnesota and Vancouver, British Columbia are cities which still have some, though perhaps less, investment potential.

It is in commercial properties that most investors seek to place their money. "Too much money chasing too few deals" or desirable properties, is the way one investment advisor described the state of the market. This is in part so because few investors are advised to invest in residential , rental properties. With the exception of advisors in two New York City commercial banks, few have sought raw, unimproved land as an investment. All investors seek a fee simple title, rather than a long-term leasehold. This is particularly true of German and Japanese investors. Finally, some individual West European investors are reportedly motivated by their geopolitical views of the political stability of Western Europe in the coming decades, when the American military leaves. These people seek a property interest in a democracy more stable than any in Western Europe, to which (presumably) they can retreat. Whether this type of motive has a destabilizing effect on Western Europe is an interesting but imponderable question for Americans hosting this investment. Similar questions could be raised about British investors fearing the further economic collapse of their home-land.

In sum, foreign investment in realty has been attracted mostly to cities and regions of the United States with a growth ethic, few land use controls, and large parcels of undeveloped land on which value may be created. 47/ The movement of foreign funds into United States real estate has traded on some differences in land markets existing in the country. Much of it has moved into regions with high appreciations in realty values when expressed in percentages rather than dollar amounts. More recent investments have dispersed from such areas.

The Settlement Process

The acquisition of American real property, for foreign investors and others, is basically a four-step process: finding the property, executing a contract to purchase it, financing that purchase, and closing the transaction. 48/ For aliens, however, the process is more complicated.

The very process of gaining entry into the United States is a problem. The immigration laws have provisions directly applicable to and limitations on entry of present or potential investors in United States enterprises. Inter alia, an immigrant is defined as

> an alien entitled to enter the United States under . . . a treaty . . . solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital 49/

Investors whose allegiance is to a treaty country and who have some minimal managerial duties in an enterprise can obtain a visa and gain permanent residency if they have or are seeking to invest $10,000 in the real property. 50/

While in residence, they must devote full time to the investment. Contracts, leases, and balance sheets must provide evidence of it or of an intention to invest.

47/ Trillin, "U.S. Journal: Charleston, South Carolina: The Blacks, the Jews, and the Bird-Lovers," The New Yorker (May 12, 1975) at 101 (concerning an Arab purchase of an island off the South Carolina coast); "Foreign Investment in the Ninth District Q. (July, 1975) at 6, Fed. Res. Bk. of Minneapolis (concerning Canadian investment in natural resources); M. Hornblower, "Carolina Isle Splits Arabs, Developers," Wash. P. (Apr. 27, 1976) @ C7, c. 7.

48/ See, e.g., Gresham, "The Residential Real Estate Transfer Processes: A Functional Critique," Emory L.J. 421, 424-25 (1974).

49/ 8 U.S.C. §1101(E)(ii); Comment, "Foreign Investment in the United States," 12 Hous. L. Rev. 661, 167-72 (1975).

50/ 8 C.F.R. §214.2(e).

Immigrant investors from treaty countries can direct or develop a realty enterprise, but they need not (as landed investment often will not) engage in an activity that results in trade with the United States. 51/ They are eligible for "E-2" visas, obtainable by filing applications at American consulates abroad. 52/ These are obtained more quickly than some alternative visas which require the filing of a petition with an office of the Immigration and Naturalization Service and are available when an investor has made a substantial investment or has one in process.

Four non-immigrant types of visas authorize salaried foreigners to work here. The "treaty investor" visa is available pursuant to bilateral agreement on reciprocity for United States citizens and has no maximum period of permissible stay in the country.

Brokers, Finders, and Others

It is unlikely that many investors would come in person to locate a suitable property. More likely, intermediaries would be used. The parties to a domestic real estate transaction normally use the services of a real estate broker, but for non-resident foreign investors, the broker's work is divided in two and is performed by finders and brokers.

> Such distinction as exists between these two terms is more a matter of trade usage than legal definition. In general, a finder is an independent actor whose role is that of a middleman who introduces the parties, supplies information to one or both about the other and is required to do little else, whereas a broker 'negotiates on behalf of one of the parties or performs or is required to perform some other act identified with the interests of one party and against the interests of the other.' *** 'The finder is a person whose employment is limited to bringing the parties together so that they may negotiate their own contract.' 53/

If this middleman has some indicia of or written authority to engage in negotiations, he is generally classified as a broker, rather than a finder. 54/ Brokers charge a commission, generally 6-7% of the sales price. Finders' fees are usually a lower percentage, but generally 2-4%, although some charge as much as 15% when the source of the money is undisclosed. 55/

51/ 8 U.S.C. §1101(E)(i).

52/ 22 C.F.R. §§41-42.

53/ Amerofina, Inc. v. U.S. Industries, Pa. Super. Ct. 1975, 335 A.2d 448, 451.

54/ Id/ at 452.

55/ Busin. Wk. (Jan. 30, 1976) at 31; Interview Memorandum, on file with author.

> A 'finder's fee' is a kind of commission as to which there is no percentage fixed by custom. In the absence of any agreement thereon the percentage allowed to the finder depends on how much work is done by him and what his position is in the deal vis-a-vis the persons with whom the banker [or other commercial operation] is negotiating it. 56/

Finders charge, in other words, what the market will bear. This reliance on trade usage produces a good deal of litigation, since the finder's employment contract is often oral and consists of no more than a phone call responding to a rumor. In these lawsuits, one issue often raised is whether the contract is subject to the Statute of Frauds. 57/ In some states, statutes require that brokerage contracts be in writing. Recent decisions (particularly in New York) have denied recovery on oral finders' contracts in quantum meruit or on a theory of implied contract. 58/

In most states brokers are prohibited by statute from dividing or sharing commissions with those not licensed to conduct a brokerage business in those states; hence, another reason for finder's fees. A further question is whether or not the finder is subject to the statutory scheme of regulation for real estate brokers. 59/

On both of these questions, there is a split of judicial authority. 60/ The effect has been for the parties to multijurisdictional sales contracts to stipulate who shall bear the liability for all these commissions and fees and to decide in advance of a dispute which state's law should control. Such decisions usually have the effect of minimizing any liability of the purchaser.

One method of avoiding the problem raised by the Statute of Frauds is to make the performance of the services of the finder part of a joint venture or partnership but the courts have scrutinized such relationships closely as an attempt to avoid the effect of the Statute. 61/

Yet, there is still, however, a surprising risk of litigation in substantial transactions. The liability of the investor depends, not on the finder's participation in contract negotiations, but on his becoming an

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56/ Cray, McFawn & Co. v. Hegarty, Conroy & Co., 27 F.Supp. 93, 97 (N.C.N.Y. 1939).

57/ Minichiello v. Royal Business Funds Corp., 18 N.Y.S.2d 521, 277 N.Y.S.2d 268, 223 N.E.2d 793, 24 A.L.R.3d 1154 (1966).

58/ Id.

59/ Annot., "Validity, Construction, and Enforcement of Business Opportunities or 'Finder's Fee' Contract," 24 A.L.R.3d 1160, 1172 (1966).

60/ Id.

61/ Allen Chase & Co. v. White, Weld & Co., 311 F.S. 1253 (N.C.N.Y., 1970).

"effective procuring cause" of the contract agreement, even when negotiated by third parties, 62/ or a closing. Since this is a very generally worded rule, the finder's employment contract stipulates which--contract or closing--is required.

One additional advantage of using a finder is that his principal may remain undisclosed. This secrecy is another subject for the sales contract, which may (as in one instance in Washington, D.C.) enjoin disclosure of the identity of the purchaser until after the closing--not from the vendor, 63/ but to third parties. When purchaser's identity is not made known to the vendor and it is likely that he would object if he knew, and if the proposed use of the property is objectionable to him and would likely injure his remaining holdings in the neighborhood, the purchaser may have a right to rescind the contract or the deed. 64/ Non-disclosure may anull the underlying transaction, even after closing.

Finders are normally, then, property locators. In some cities, real estate brokers know (through a more or less general circulation) which telephone numbers to call. A call brings a finder to inspect the property. 65/ Finders contacted by brokers in this way work out of regional financial centers.

Often such a finder is equipped with an exclusive agency and sometimes even the authority to deal on behalf of the investor. A power of attorney is the document accomplishing this. It is used more by West European representatives than by Japanese or Middle Eastern ones.

The finder's function is most easily and normally performed by brokerage firms which conduct regional or statewide operations and tend to favor direct foreign investment in United States properties more than the local realty brokers.

For the present, many investors--reportedly the Canadian and British most frequently--tend to use a variety of intermediaries who need not be in the locale of the purchase; 66/ established business relationships often count for more than location. The foreign investor does not seem to mind compensating both finder and broker. Besides finders, investment counselors and the real estate advisory departments of commercial lenders and merchant bankers may locate the investment property.

62/ See Amerofina, Inc. v. U.S. Industries, Inc., supra fn. 53; B-H, Inc. v. "Industrial America," Del., 1969, 253 A.2d 209.

63/ Kessler, "Kuwait to Buy Office Building," Wash. P. (Dec. 26, 1975) at C1, c. 3.

64/ Cook, "Straw Men in Real Estate Transactions," 25 Wash. U. L. Q. 232 (1940); A. Axelrod, C. Berger and Q. Johnstone, Land Transfer and Finance 325-30 (1969); Uniform Land Transactions Act, §2-509 (1975).

65/ Interview memorandum, on file with author.

66/ E.g., "Kuwaitis Purchase Property in Boston," Wash. P. (Aug. 31, 1975) at B2, c. 4, in which a transaction involved a Greenwich, Connecticut real estate broker and Massachusetts property.

Finders are the most fragmented and disorganized group of people locating suitable investments for alien investors. Others provide counseling exclusively for real estate investments, and work for private individuals, firms and commercial banks. 67/ (The latter often, however, choose to provide in-house expertise for themselves by establishing real estate advisory departments.) These consultants work for a fixed retainer, set by contract, with maximum and minimum amounts predetermined but subject to a renegotiation clause. This retainer is payable whether or not the investor finds suitable properties and on this basis, such consultants are distinguishable from brokers and finders. They maintain extensive contacts with brokers around the country. 68/ They write a prospectus on the investor's needs and invite offers to sell. These prospecti are distributed to brokers through the use of mailing lists provided by professional societies and also through the consultant's own lists. The largest of these consultants work through computerized lists, the smallest by personal contacts and word of mouth. Consultants who deal exclusively in real estate investments generally have other capabilities helpful in analyzing potential investments--skills in real estate appraisal, land-use planning, and econometric models among them.

Subsidiaries of stock-brokerage houses also provide these consulting services, but often their clients are American developers seeking financial backing. These clients tend to have special problems (e.g., multi-use projects) which make them special risks for domestic mortgage lenders and they must cast their net more widely. Sales of the real estate subsidiaries of United States corporations might result from such searches. The management problems encountered by these companies unfamiliar with real estate markets make them good buys for the experienced manager. 69/

As mortgage brokers, the larger companies charge a commission fixed as a percentage of the amount of the mortgage loan procured. The largest companies charge 1%, but will accept no brokerage contract involving less than a large minimum amount--in one case, five million dollars.

Some of the larger of these subsidiaries have several other departments, including a real estate advisory department, a real estate investment trust, and a realty management division.

Their advisory services are provided on either a commission or retainer basis. Both of these types of advisors use legal counsel in the law firms located in the same cities in which they have home offices, and these counsel oversee the work of title attorneys and title-assuring

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67/ Interview memoranda, on file with author and on which the discussion of consultants and brokerage subsidiaries is based.

68/ The need for a national diversified portfolio is emphasized in Matter of Spitzer, N.Y., 1974, 323 N.E.2d 700, noted at 114 Tr. and Estates 286-89 (1975); Steiner v. Hawaiian Trust Co., 47 Haw. 548, 393 P.2d 96, 105-06 (1964) (both trust cases).

69/ See generally, Farrell, "Strategies for Foreign Corporations in the U.S. Realty Market, 3 Real Estate Rev 27 (1974).

services in the locale of the properties purchased. Whether served by real estate consultants or brokerage house subsidiaries, the clients most often sought are banks and pension funds with large amounts to invest.

Their employment contracts often include a clause giving the advisor "investment discretion," that is, the authority to execute the purchase, not just to recommend it to the client. However, the act of making recommendations alone may give rise to fiduciary duties and liabilities in work performed for pension funds. 70/ Where the purchase is financed by debentures or shares, securities law problems may be present as well. 71/

The Attitude of Brokers' Organizations

Since many of the foreign purchases of United States properties have involved industrial sites--though often with much surrounding acreage--the brokerage firms most interested in foreign investment have been the members of the Society of Industrial Brokers. Only in May, 1976, does the National Association of Realtors expect to spin off a section on transnational realty transactions.

In a time of increasingly large brokerage operations, real estate brokers are, by and large, in favor of foreign investment in American natural resources and properties. 72/ Why not, they reason. The greater the number of bidders for a commodity, the higher the purchase prices will tend to be. Several organizations of brokers have been asked to go on record against foreign investment, but all have declined thus far. One such request was made after a foreign purchase of a large tract of ranch land in Wyoming. Ironically, some of the land was already in alien hands. The state Institution of Farm and Ranch Brokers asked the National Association of Realtors to condemn the trend represented by the sale. 73/ Its president declined, in favor of more discussion. Whether this attitude will continue is doubtful. Some states make citizenship a requirement for an individual's broker's license, 74/ and foreign firms controlling domestic brokerage

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70/Lovitch, "The Investment Advisors Act of 1940 - Who Is An 'Investment Advisor'?," 24 Kan. L. Rev. 67, 73, 79 (1975); Cummings, "Purposes and Scope of Fiduciary Provisions under the Employee Retirement Income Security Act of 1974," 31 Busin. Law. 15, 70-71 (1975); Id. at 92 (comment on Cummings paper by S. Sacher).

71/ SEC Rul., General American Investors Company, Inc., CCH Fed. Sec. L. Repts. para. 80,344 at 85,919 (Jan. 7, 1976).

72/ Hawkinson, "The Peaceful Foreign Invasion," Soc. Ind. Realtors Reports (Jul.-Aug., 1974) at 2, 8.

73/ Id/ at 10.

74/ Ca. Bus. & Prof. Code §10150.5 (1964) required citizenship but repealed 1972; see 55 Opin. A.G. 80 (Feb. 9, 1972); Flor. Stat. Ann. §475.17 (1975) (requires citizenship); Ga. Code §84-1411(a) (1975) (requires intent to become a citizen); Mass. Gen. L.C. 112, §87TT (1975) (requires citizenship); Minn. Stat. Ann. §82.20(1)-(3) (1975)(cont.)

corporations may prove that brokerage can be as profitable as direct investment. Some foreign firms have moved to open or purchase brokerage companies in the United States; meanwhile, a few American brokerage houses have established foreign branches. 75/ One was opened in Beirut just prior to the outbreak of the 1975 Lebanese Civil War.

State Development Agencies

The intermediary for foreign corporations locating plant sites in the United States is often a state economic development agency. 76/ Fourteen states now have some twenty overseas agency offices to extol the advantages of sites for industry in their jurisdictions. 77/ Southern states have been particularly active in this effort. There, a regional body coordinates these promotions, 78/ based mainly on economic incentive for investments such as tax rebates, state-backed bond financing, free manpower training, and computer-assisted site location and master planning. Most states in other regions of the country have established or will soon establish such groups. State agencies are represented in Washington by a trade association, the National Association of State Development Agencies. 79/ The mission of this body is to encourage overseas promotions--including seminars and tours--funded by the United States Commerce Department. Officials see the role of NASDA as encouraging foreign corporate investment in plant sites, and de-emphasizing foreign land purchases, which produce few jobs and create local hostility. Industrial incentives are an old game for some states, but today the effort is international in scope.

74/ cont. (no citizenship requirement; requirement repealed in 1973); Mich. Stat. Ann. §19.798 (1975) (requires citizenship); N.Y. Real Prop. L. §440-a (1975) (requires citizenship); 63 Pa. Stat. Ann. §436(b)(2) (1975) (requires citizenship); Tex. Stat. Ann., art. 6573a(6)(a) (1975) (requires citizenship). Although there are citizenship requirements, their constitutionality is suspect. In re Griffiths, 413 U.S. 717 (1973) (held resident aliens entitled to practice law); Purdy and Fitzpatrick v. State, 79 Ca. Reptr. 77, 456 P.2d 645 (1969) (held a statute prohibiting aliens working on public works contracts invalid). See n. 33, supra.

75/ Hawkinson, Foreign Investment Inside USA report (May 15, 1975) at 5 (hereafter FIUSA rep.).

76/ E.g., N.J. Stat. Ann. 1-B: 15.75-.76 (1974); N.Y. Commerce Law §100 (1975).

77/ FIUSA rep. (Nov. 15, 1974) at 5.

78/ H. Keogh, "State Efforts to Attract Direct Foreign Investment," (unpublished paper); "Directory of State Development Agencies," 61 Am. B. Assn. J. 1111 (1975).

79/ Where no express statutory authority is given for such activity, the question arises whether there is a public purpose in the expenditure of public money for support of such activity. See J. Fordham, Local Gov. L. (rev. ed. 1975) 132.

Financing the Purchase

Types of Investors

What is the source of the money for these "reverse investments?" Aside from the spectacular all-cash purchasers who grab the headlines, much of the money is the result of syndications taking a corporate form, channeled through tax havens. The most-used havens are Bermudian, Bahamian and Netherlands Antilles corporations (if the source is European or Latin American) and Hong-Kong or Tiawanese corporations (if the source is a Pacific-rim country). 80/

Syndication and financing documents have proven impossible to obtain; yet if the investment objectives set out in a proceeding section 81/ are correct, not much leverage is used and the cash-component of the purchases is probably larger than usual in domestic transactions. The result is an attractive prospect for vendors who might otherwise have to wait out a long executory period while the purchaser obtains financing.

A syndicate is a generic name for a group of investors. It may take the guise of a corporation, close corporation, partnership, limited partnership, joint venture, trust mortgage lender, installment land sale purchaser, leaseholder, or output contractor. 82/ Foreign institutional investors--particularly European pension funds--are also active. One German syndicate reportedly represented 125 firms in 43 countries when pledging $140,000,000 to a satellite new town around Boston. 83/ In this instance the collector of funds was foreign, but regional investment bankers have filled the same role domestically. Lebanese, Kuwaiti, and Persian Gulf investors funded a package of loans made by a Louisville, Kentucky financial and brokerage firm. 84/ These fundings were made in late 1973. They were carefully-packaged investments for clients collected on an individual basis.

In the case of the Louisville firm, the president reported that negotiations for the funds took eight months. Initial investments in real estate were $50,000,000, "backed by a $200 million line of credit." 85/ Foreign investors were promised a set rate of return, suggesting that the intermediaries might be compensated with any profits earned above the guaranteed rate.

80/ Interview memoranda, on file with author.

81/ Forry, supra at n. 45; ibid. "Planning Investments from Abroad in United States Real Estate," 9 International Law. 239 (1974).

82/ This list is not exhaustive; e.g., the corporation could be domestic, out-of-state (typically incorporated in Delaware or Nevada), or alien.

83/ FIUSA rep. (Jun. 1, 1974) at 4.

84/ Meyer, "Mideast Oil Interests, Seeking Dollar Haven, Try U.S. Real Estate," Wall St. J. (Jan. 11, 1974) at 3, c. 6.

85/ Id.

There are less individualized vehicles for such investments, such as offshore realty investment trusts. Their shares may be traded on European stock exchanges without tax consequences for non-resident investors in their home countries. 86/ One feature of the Netherlands Antilles Corporation (reportedly much-used) is that its shares may be transferred without tax consequences in the United States or Netherlands Antilles; 87/ in countries where, either by treaty or income tax statute, income from the shares of non-resident corporations are not taxed, this provides an international flow of tax-sheltered funds for investment. 88/

Finally, considerable institutional mortgage investments have been made by European pension funds. Foreign mortgage capital is often placed in construction loans by corporate subsidiaries of large national stock-brokerage firms. Their fee is a percentage of the loan amount.

Syndicate Preference

Some syndicates concentrate on particular regions or types of properties. Middle Eastern investors have focused their purchases in the Southeastern United States. 89/ Japanese investments have tended to cluster in Hawaii resort properties, tourist facilities in California, and in natural resources on the Pacific and Gulf Coasts and in Alaska. 90/ One Dutch syndicate specialized in mid-South apartment houses. 91/

Geographic preferences are hard to explain. Concentrating on the Southeast may be natural enough, however, since that region has recently experienced high appreciation in realty values, has traditionally financed much economic development with out-of-state capital, and has been aggressively recruiting foreign money. Japanese purchases around Japanese-American centers within the United States tend to support the Japanese tourist industry in the United States, 92/ but the clustering

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86/ E.g., Kessler, "Little Liechtenstein Still Draws Tourists And a Lot of Money," Wall St. J. (Jan. 11, 1974) at 3, c. 6.

87/ Forry, "Planning Investments from Abroad in United States Real Estate," 9 Internat. Law. 239, 248 (1974).

88/ United States - Netherlands Tax Treaty of 1948, as amended and extended to the Netherlands Antilles, Arts. V, X, XII.

89/ FIUSA rep. (Apr. 1, 1975) at 4. (Jan. 1, 1975) at 3; (Jan. 15, 1974) at 1, 5.

90/ Cannon, "Increasing Investment in U.S. By Foreigners Irks Many in Congress," Wall St. J. (Jan. 22, 1974), c. 7; FIUSA rep. (Jan. 15, 1975) at 2; (Dec. 15, 1974) at 5.

91/ FIUSA rep. (Aug. 15, 1974) at 5; (Jan. 1, 1974) at 4.

92/ One Los Angeles urban renewal project was referred to as "Little Tokyo." FIUSA rep. (Nov. 15, 1975) at 5. Whether an alien could participate in the federal subsidies for developers participating in an urban redevelopment seems controlled by the recent case of Ramos v. United States Civil Service Commission, 376 F.Supp. 361 (D.P.R., 1974) (holding federal agricultural subsidies available to aliens).

of Japanese urban investments makes them highly visible and stirs local resentment, 93/ which in turn has forced some recent decentralization of these activities. 94/ Foreigners reportedly show a predilection for coastal land, which is either more costly or unavailable in many other countries. 95/

In foreign purchases of farmland, financial intermediaries are found in Chicago (e.g., Continental Illinois National Bank, Northern Trust Company, and a German-owned private mortgage company) Peoria, and Omaha commercial banks.

When investments are made for Middle Eastern funds, the objective is stable yield along with modest appreciation in value. Such non-speculative investors, when confronting an American lending institution with the prospect of sizeable deposits, request a guaranteed return (of reportedly 12 to 14%) as a condition of the deposit. 96/ Smaller banks, confronted with the prospects of doubling their assets overnight, are presented in a dramatic way with a general problem the banking system has in dealing with the international flow of investment funds. That is, it must attempt to stabilize this flow, so that the investment represented by the deposits will last roughly as long as the domestic loans which the bank must make to pay for the use of the capital. 97/ For example, short-term, demand deposits must be converted into long-term assets if long-term loans are to be made. More generally, the term of the deposits must somewhat exceed that of loans if the stability of the banking system is to be maintained. Thus the role of the banker is to turn short-term commitments into longer term ones 98/ and in our investment system, mortgages perform that function admirably. The banking community can then reasonably be expected to encourage foreign investment in United States land. Bank asset managers realize that realty ownership and finance represent a long-term commitment to our economy and banking system. Bankers can therefore be expected to press at minimum for foreign-held equitable security interests in United States properties.

The process of obtaining financing from American lenders is new and unfamiliar to foreigners. American lenders ask for more detailed credit

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93/ This is particularly true in Hawaii, where Japanese demand for resort properties has allegedly driven prices up. FIUSA rep. (Sept. 15, 1975) at 5; (Dec. 17, 1973) at 6.

94/ FIUSA rep. (Dec. 15, 1974) at 4.

95/ G. Lefcoe, Am. Land Law 36 (1974); Constitution of Mexico, Art. 27 (I).

96/ Interview memoranda, on file with author; see also, 47 Moody's Bank & Finance News Repts. 1138 (1975) for the terms for a Dutch firm's purchase of a "preferred" one-half interest in three shopping centers owned by Rouse Company, Baltimore, Maryland.

97/ Cf. Robardes, "Spending the Oil Money," N.Y. Times (Aug. 4, 1974) op. ed. p.

98/ Id. Farnsworth, "The Riches May be Too Much for the Oil Nations," N.Y. Times (Oct. 13, 1974), op. ed. p. ; Sulsberger, "Of Time and a River of Oil," N.Y. Times (Jul. 28, 1974) op. ed. p.

information than foreign banks and often require compensating balances for real estate loans. This unfamiliarity and the increased amounts of financial information required (which often amounts to a breach of privacy and confidentiality in foreign eyes) has three consequences: foreign investors either (1) use only established banking relationships for their purchases in order to avoid wider disclosure; (2) pay cash; or (3) purchase the owner's equity in a property with assumable financing. There is also a "herd instinct" at work: investors and their advisors tend to place money in areas where alien purchases have previously been made--hence, another explanation for the British preference for New York, or the Arab preference for the Southeast.

However, as more foreign development firms establish United States subsidiaries, 99/ this tendency to shun United States real estate capital markets will probably diminish. 100/ Some indication of this can be seen in manufacturing sectors where United States subsidiaries of foreign corporations tend to be more highly leveraged than American competitors; and if brokerage and financial firms are also acquired, familiarity with and access to United States mortgage lenders will certainly increase. Thus in the future the favorable balance of payments in the realty sector, which mortgage investments and high equity purchases represent, may diminish. Again, as with brokers, this may signal a change in American attitudes toward foreign investment. Today such attitudes are in formative or transitional stages.

The funds associated with foreign investment have been loosely described as "patient capital," "particularly suitable for investment in real estate," and "more concerned with inherent asset value than with earnings." 101/ These may prove to be verbal placeboes and need more scrutiny. Arab money has been anything but patient: most is in short-term, high-yield deposits though their land investments have not proven skitterish when opposed. 102/ It may be true that some foreign investors have paid premium prices and so reduced their rates of return, but that makes them more eager than patient.

Given investor preferences for liquidity in United States investments, it is not surprising that property- or mortgage-backed securities and

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99/ FIUSA rep. (May 15, 1975) at 5.

100/ If the alien investor's aim is to protect his capital from uncertainties abroad, his aim may remain to invest as much as possible. See text at n. 42, supra. However, tax law changes may make leveraging more desirable in the future. If the foreigner's title is challenged by the state and is mortgaged, order of alienation problems may arise upon a mortgagee's attempt to foreclose his interest while the state attempts divestiture. See text infra at n. 136.

101/ Hawkinson, "The Peaceful Foreign Invasion," Soc. Ind. Realtors Reports (Jul.-Aug., 1974) at 2, 10.

102/ Trillin, supra at n. 45. Reportedly the money invested on Kiawah Island, S.C., by Iranian investors doubled in the year since the closing.

debentures have also been marketed to foreign investors. Perhaps a role as secondary-market investors better suits the mood and objectives of many foreign investors. In any case, such investments can be suitably large, in units of $100,000 or one million dollars. Some marketing of state housing finance agency bonds has also been attempted by state officials, apparently without success, but some investments in federally-guaranteed secondary mortgage bonds has been undertaken by foreigners and foreign governments.

The handling of foreign investors' funds by the mortgage banking system has at least three other dimensions. (1) There is purportedly a great shortage of domestic capital for expansion of the American economy. 103/ The capital shortage for real estate development in this country is well known and chronic. Whether this shortage is real or the borrower's unwillingness to pay the current price of money (which foreign investors could alleviate by increasing the supply of money) is left an open question here. Some foreign investment is seen as an alternative to the federal government's increasing the money supply and (so) increasing our domestic rates of monetary inflation. 104/ (2) After a period in which commercial bankers have relaxed the traditional separation of banking and investment advisory services 105/ by establishing and then advising Real Estate Investment Trusts, 106/ commercial bankers may be looking to place foreign investors' funds into these same trusts, now reportedly in need of cash. 107/ Thus the investment advisors of commercial banks have an interest both in increasing the scope of their own activities and shoring up past mistakes. A third aspect of this situation is the banking community's desire to take interbank deposits from countries in and to which loans have been extended in the past, 108/ resulting in more stable system of international banking, it is argued.

The banking process for investing foreign funds suffers also from the organizational complexity of large banks. Loan officers are not

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103/ Bus. Week (Sept. 22, 1975) at 42; R. Watson, "Banking's Capital Shortage: The Malaise and the Myth," Bus. Rev.3d Fed. Res. Dist. (Sept., 1975) at 3, 4.

104/ H. Brownell, "Foreign Investment in the United States Should Not be Restricted," Speech to Am. Bar Assn. Nat. Inst. on Legal Aspects of Foreign Investment in the United States," Chicago, Ill., Oct. 2, 1975, at 5.

105/ Comment, "Bank-Sponsored Investment Services: Statutory Proscriptions, Jurisdictional Conflicts, and a Legislative Proposal," 27 U. Flor. L. Rev. 776, 777-92 (1975).

106/ Duvall, "Conflict of Interest Problems in the Management of REITS," 4 Real Est. L. J. 23 (1975); G. Lefcoe, Land Development L. 573-75 (2d ed., 1974).

107/ 47 Moody's Bank & Finance Repts. 1253, 1448, 1578 (1975); Int. Rev. Code of 1954 §§856-58. Kessler, "Citibank, Chase Manhattan on U.S. 'Problem List,'" Wash. P. (Jan. 11, 1976) at A1, c. 1.

108/ For example, it is reported that on the failure of a European bank, a large New York commercial bank dishonored drafts on its account in New York but accepted all deposits into the same accounts.

necessarily concerned with documenting the transaction as thoroughly as a conveyancer would. Indeed, follow-up documentation is a "support service" and, in the opinion of federal bank examiners, communication between loan officers and supporting departments is irregular. 109/ The result of this complexity is that investors tend to place funds through regional banking institutions, e.g., for farmland purchases in places such as Omaha or Peoria, where closer attention can be given to individual transactions. 110/ Large banks, run today by holding companies, can be expected in the future to spin off subsidiaries or form partnerships with foreign banks to handle this problem. 111/ However, if the bank maintains an advisory role (such as many did with Real Estate Investment Trusts in the first half of the 1970s), some organizational problems may persist in the future.

Attorneys

Law firms dealing in foreign purchases of United States real properties may perform wide-ranging advisory functions, 112/ but tend to become involved as tax advisors, particularly through their transnational corporate tax practice. Their prior expertise is apt to be in real estate tax shelters for Americans and in real estate investment trusts. They are mid-size firms and often represent foreign governments, in which case, they have established domestic political ties through their senior partners as well. 113/

Foreign law firms, particularly in the Netherlands Antilles, reportedly have management and oversight functions for the transactions of the business incorporated there. 114/ Five firms in the Netherlands

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109/ Kessler, "Citibank, Chase Manhattan on U.S. 'Problem List,'" Wash. P. (Jan. 11, 1976) at A1.

110/ Interview memorandum, on file with author.

111/ E.g., 47 Moody's Bank & Finance Repts. 1072, 1204 (1975).

112/ American attorneys may encounter initial difficulties counseling foreigners on the United States legal system and the role of attorneys in it. Narcisi, "Advising Japanese Corporations Doing Business With Americans," 29 Bus. Law. 835 (1974) (counsels American understanding of protracted delays and negotiations in Japanese decision-making); Bonderman, "Modernization and Changing Perceptions of Islamic Law," 81 Harv. L. Rev. 1169 (1968) (indicates the problems of dealing with clients from a society where sources of law and social ethics are closely related); Rabinowitz, "The Historical Development of the Japanese Bar," 70 Harv. L. Rev. 61 (1956) (indicates a lower status and more limited role for Japanese lawyers); see also, Sym. on Muslim Law, 22 Geo. Wash. L. Rev. 1-39, 127-86 (1953).

113/ Interview memoranda, on file with author; Lyons, "Many Prominent Americans Represent the Interests of Foreigners," N.Y. Times (Jan. 20, 1976), at 10, c. 1.

114/ Rhoades, 1 Income Taxation of Foreign Related Transactions 2.40.3, -40.5 provides a discussion of the advantages of several "tax haven" jurisdictions.

Antilles handle the legal work of these corporations and oversee the management companies documenting their transactions. Money coming into the Netherlands Antilles in large amounts is there allocated to corporations for particular projects or investments.

Closing the Transaction

The choice of a business entity for syndicating the investment and financing the purchase will largely determine how foreign investors will take title to the property. 115/ Yet, the selection of this entity can seldom be made without regard to the investors' future plan for the property. An alien corporation may be the best vehicle if statutes and treaties allow the investors to receive tax-sheltered passive income. 116/ Alien corporations also bolster an argument to United States tax officials that the income received is not effectively connected to a business conducted within the United States and so (if not so connected) is not subject to United States income tax. 117/ This argument works best when the investment amounts to the passive holding of unimproved real property. 118/

The Internal Revenue Service has recently shown a tendency to treat any activity in regard to income producing properties as "effectively connected income." 119/ In one instance, the supervision of lease renegotiations by a non-resident alien investor was sufficient. 120/

If a foreign investor contemplates development of the property, he will need a local agent or subsidiary in most cases; this assures suppliers and jobbers that payment for work is the responsibility of an entity reachable by the American legal system. Otherwise, mechanic's liens may be filed as a matter of course, and any further construction financing and permanent financing may be that much harder to obtain. Such problems, plus the advantages of having local representatives and supervisors in any development project, make the use of local American subsidiaries increasingly likely in the future. Among foreign land development companies, this is already a discernible trend.

Where corporate entities are used, one characteristic feature is that corporate shares be transferable, between investors, 121/ between

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115/ S. Freshman, Principles of Real Estate Syndication 85-93 (1971).

116/ Int. Rev. Code of 1954 §881(a); e.g., United States-Japan Income Tax Treaty, Arts. 15(1), 16(1).

117/ Int. Rev. Code of 1954 §871(a)(2).

118/ Forry, "Planning Investments from Abroad in United States Real Estate," 9 Internat. Law. 239, 242, 244 (1975); Committee on Foreign Affairs, supra n. 36, at 240-44 summarizes relevant provisions of the Internal Revenue Code.

119/ Int. Rev. Code of 1954 §861(a)(1)(A).

120/ Rev. Rul. 63-522; cf. Rev. Rul. 75-23.

121/ Forry, supra n. 118, at 242.

investors and the corporation, and alienable by the investors themselves without tax consequences. 122/ The Netherlands Antilles Corporation fulfills this objective. 123/

With natural resources, long-term supply contracts are reportedly often used, mostly by West European and Japanese investors in coal and timber. 124/

A nominee, street name, or blind trust may also be used to take title,125/ but many jurisdictions limit trustees to residents of the situs. 126/

Before the closing, however, the foreign investor or his attorney will want to be assured that the vendor's title is marketable, that is, free from the clouds which may prevent later alienation or development. 127/ (Query whether this is a condition found in output contracts too.)

122/ Id. at 248.

123/ Id. at 247-49.

124/ Such contracts may, when future transfers of the affected properties are impeded, be an unreasonable restraint on alienation and when unlimited in time void after a reasonable time period as a violation of the public policy of the situs jurisdiction. Yet another question is whether the law of the situs controls such contracts at all. Issues involving title to land are generally resolved under the law formulated for the situs jurisdiction, but questions of the contract are settled according to the law of that jurisdiction most interested in the contract. Note, "Choice of Law Governing Land Transactions: The Contract-Conveyance Dichotomy," 111 U. Pa. L. Rev. 482 (1963). See Schewe v. Bentsen, 424 F.2d 60 (U.S.C.C.A. 5, 1970) (held Arkansas law applicable to sale of motel, located in Arkansas, between parties in Texas and Illinois, with the deed delivered in Missouri; this decision was reached under Texas choice-of-law rules). The leading American case for the situs-title rule is United States v. Crosby, 111 U.S. (7 Cranch.) 114 (1812) (Massachusetts land sale improperly notarized under Mass. law in the West Indies by vendor and purchaser in the latter place, did not pass title.) See generally, Cramton, Currie and Kay, Conflict of Laws 32 (1975); Scoles & Weintraub, Conflict of Laws 591-96 (1972); Reese and Rosenberg, Conflict of Laws 776-91 (1971). To the degree that our state and federal governments formulate policies on alien ownership, situs rules may come to dominate transnational transfers of title.

125/ The validity of a trust for land is again controlled by the law of the situs of the land. Mead v. Brockner, 82 App. Div. 480, 81 N.Y.S. 594 (2d Dept., 1903); Beale, "Equitable Interests in Foreign Property," 20 Harv. L. Rev. 382, 384, 387 (1907).

126/ A. Scott, Abridgement of the Law of Trusts 203 (1960); R. Newman, Trusts 423 (1955).

127/ 3 Am. L. Prop. 126-46 (1952).

American title assuring methods differ materially from those used in virtually all other countries. 128/ Here, an attorney, abstractor, or title insurer passes on the marketability of the title by reviewing documents recorded in public land-related records. 129/ This is done each time a property changes hands. 130/ This review of recorded documents results in an attorney's certification that the vendor does present a marketable title; in urban areas, a policy of title insurance may supplement or replace this certificate. 131/ When this process results in a title insurance policy for the benefit of the foreign investor as the insured, some unique title problems arise. 132/ Foreign purchasers, be they individuals, corporations, or governments, must make disclosure of their nationality; failure to do so will result in an "act of the insured's" which will void the policy. 133/ This will entitle the company to return the premium and avoid liability for claims made under the policy as a result of alien divestiture. This disclosure is usually made willingly in order to avoid this result, but also in order to enlist the title insurer in the search for a title-holding vehicle legal under the restrictive laws of some states. If the state prohibition is on alien land-holding, corporate ownership may suffice for this purpose when a foreigner is willing to subscribe to its shares, which are personal and not real property. In other instances the foreigner may be advised to become the beneficiary of a trust and so again will hold personalty. Similarly, an interest in a limited partnership with an American bank as a general partner may be personalty. 134/ Once the best vehicle is found, it must also be found qualified to "do business" in the situs jurisdiction. 135/

Conclusions about the range of permissible title-holding vehicles are often drawn on the basis of only a few cases and relevant legal materials; the insurer winds up making an informed, good-faith estimate of legal outcomes of which he is unsure. If the uncertainty is great enough (a business judgment, really), he will write a special exception in the policy, i.e., "this policy excepts claims based on the legal consequences

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128/ Behrens, "Land Registration in the United States," United Nations Econ. and Soc. Council, Econ. Comm. for Africa, Seminar on Cadastre, Addis Ababa (1970); Merryman, "Toward a Comparative Study of the Sale of Land," II Jus. Privatum Gentium 737 (1969).

129/ P. Basye, Clearing Land Titles 13-16 (2d ed., 1970).

130/ In most other countries, a finding of marketability, once made, would not be reexamined, but merely updated to the time of the next transfer.

131/ Basye, supra n. 129, at 14.

132/ Pedowitz, "Title Insurance--The Multiple-State Transaction," in Pract. L. Inst., Real Estate Financing - Contemporary Techniques 105 (1973).

133/ Am. Land Title Assn., Single Form Policy of Title Insurance - 1970 (hereafter ALTA Policy - 1970), Exclusions from Coverage, at 3, para. 3.

134/ Interview Memorandum, on file with author.

135/ See Pedowitz, supra n. 132, at 717-18 (for survey chart for qualifying out-of-state mortgage lenders).

of the insured's nationality." Similarly, a title attorney might make a notation on his certificate, requiring that the closing be held before the state institutes any type of title divestiture.

The hardest legal questions arise when the purchaser is a foreign government, because many statutes relaxing common law restrictions on alien land-holding arguably do not apply to foreign governments. There the insurer will encourage a prominent role by an American partner, a role that the Chase Manhattan Bank and the Bank of America have long sought to perform for some Arab states.

It might be argued of course that there really is no special title insurance problem posed by foreign ownership. Title insurance is a form of written assurance that, as of the policy date, title is good and marketable in the insured, be he a foreigner or not. 136/ If the state (the only party able or likely to seek divestment of title) later seeks divestment of that title, no claim arises because the policy does not represent that the title will be good--only that it is (or was) good on the date of issuance.

The alien's title, however, if in contravention of common law or statutory restrictions, might be viewed as void ab initio, rather than merely voidable by the statute. Since "title insurance looks to the future," this view argues that the insured would not bother with title insurance if he did not seek assurance that he could use the property in the future. 137/ There is support for these propositions in cases in which policy holders have claimed amounts based on loss of future value, rather than on the purchase price of the property. 138/ This question remains an open one. The better view, considering the ability of the alien to convey good title to third party Americans until "office found," is that the alien has a voidable but not a void title.139/ Some insurance policies give the insured a duty to mitigate damages claimed 140/ and some allow the insurer to clear a flawed title by buying out the encumbrances on it. 141/ If this option is available,

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136/ ALTA Policy - 1970, at 1, provides that the company "insures, as of Date of Policy...against...loss or damage...sustained by reason of" "title to the estate or interest...being vested otherwise than as stated." See also id. at 3, para. 1 (exclusion for any law...prohibiting the occupancy...of the land"), para. 2 (exclusion for "governmental rights of police power"). See Freedman v. Scheer, Ga., 1967, 157 S.E. 2d 875 (Held, Testamentary disposition of Georgia real property to foreign government contravenes the sovereignty of the state); see generally Brodkey, "Foreigners Intrigued by U.S. Real Estate," Guarantor (Winter, 1976) at 12.

137/ Overholtzer v. Northern Counties Title Insurance Co., 116 Cal. App.2d 113, 253 P.2d 116 (1953).

138/ Id.

139/ G. Sharswood & H. Budd, supra n. 1, at 493-97.

140/ ALTA Policy - 1970, "Conditions and Stipulations," para. 3(e) at 13.

141/ Id., para. 5, at 14.

the policy can be written or interpreted to allow the foreign interest to be sold on challenge by the state. Generally, though the foreigner has a void or voidable title, he can still convey a marketable one. The conveyance will then clear the title and satisfy the insured's duty to mitigate as well. Practice varies from company to company, but the attitude of the industry is "we don't make money unless we write insurance." The danger of course is that if the insurer himself is unclear as to the meaning of his policy when disputes arise, the courts are likely to interpret it for him--and in this situation to construe it against him.

When foreign investors attempt to sell or to transfer title for any other reason, clearing title anew where it was initially taken in many names is complicated, depending upon the vehicle chosen. Insurers have a great incentive to encourage simple title-holding to minimize the process of checking on the vendor's authority to convey upon a subsequent transfer. This is another reason for local subsidiaries, agents, and attorneys armed with a power of attorney or investment discretion.

The process of taking title is the final step in the acquisition process and the foreign investor cannot avoid doing it "our way." Yet land-related public records, traditionally kept on the county level in this country, provide no effective device for disclosing the extent of foreign interest in United States realty. 142/ These records are indexed by parcel number, or worse yet for purposes of disclosure, by the names of vendor and purchaser. 143/ If secrecy is an objective of foreign investors, our land records serve this aim very well. Compiling an inventory of past foreign investment is a well-nigh insuperable task and special legislation is needed if future foreign purchases are to be monitored. To date only one state, Iowa, has undertaken to use its recording laws to monitor foreign ownership of its land. 144/ The scope of this statute raises questions of statutory interpretation which may confront other states drafting similar legislation. It is aimed at providing information on corporate ownership and the use of limited partnerships as well as ownership by non-resident aliens. Whether a non-resident alien who invests in corporate shares or limited partnership interests in real property must report separately, in addition to the reporting necessary by corporations and limited partnerships, is unclear on the face of the statute. 145/ Non-resident aliens "owning" or "leasing" agricultural land does not cover alien shareholders' or partnership interests, nor an alien holding "output" contracts for agricultural land. 146/

Moreover, the separate records required under this bill raise the question of whether the information might not be better integrated into the public land-records recording system. Separate reports to state

142/ Basye, supra note 129, at 1.
143/ Id. at 8-13.
144/ Iowa Hse. File No. 215 (1975), §§7-9, 13.
145/ See Id., §§8(3) and 9(3).
146/ Id., §7.

officials lack the sanctions for the underlying transaction which a failure to record carries with it. 147/

Another document generated at the closing or shortly thereafter is a management contract. 148/ Property management departments of large realty brokerage firms are common today. The conduct of rentals, repairs, maintenance, and negotiations with holder of superior liens (taxing officials, contractors, and lenders) all require on-the-spot supervision. For farmland, management firms are sometimes foreign-owned and tend to be located in regional financial centers. Indeed, development and management may generate some unique legal problems for the foreign investor. Examples are provided in a footnote. 149/

147/ 4 Am. L. Prop. §17.5, at 535-45 (1952).

148/ Adams & Leonard Realtors v. Wheeler, Okla., 1972, 493 P.2d 436 (management contract with right to sell authorized).

149/ Two areas in which the foreign investor may run afoul of American law lie in our securities and civil rights law. First, where (as once reported) non-resident aliens invest in condominiums on New York City's East Side, not for purposes of ownership, but for investment through rentals to unknowing Americans, the transfer of air-rights and membership in the home owners' association may qualify as a "security" (SEC v. W.J. Howey Co., 328 U.S. 293, 300 (1946)) requiring the vendor to register with state officials or the federal Securities and Exchange Commission. SEC, Securities Act Release No. 5347 (1972); see Greenwood, "Syndication of Undeveloped Real Estate and Securities Law Implications," 9 Hous. L. Rev. 53 (1971). Past cases have exempted shares in cooperatives assuming a dominant residential purpose in the cooperator, Annot., "Blue Sky Laws - Investment Contracts," A.L.R.3d 1375, 1380, 1383-90 (1973). Where the purpose is otherwise, the securities laws may apply. Joint Release of Md. and Va. Div. of Securities, D.C. Pub. Serv. Comm., and SEC, Md.-Va. Release No. 1, D.C. Release No. 9, SEC Release No. 4877 (Aug. 8, 1967), "Real Estate Syndications"; see also Opin. Haw. A.G. 66-8. Disclosure laws such as those administered by the SEC have not yielded significant disclosure of the financial interests and backers of industrial purchases by foreigners. In Ronson Corp. v. Liquifin, 370 F.Supp. 597 (D.N.J. 1974), an allegation of inter-corporate loans and transfers failed for plaintiff's want of proof and tracing extra-corporate funds led only to brokerage accounts and foreign trustees. See R. Newman, Trusts 423 (1955). So the names of the true financiers were not provable either. See also, Texas Gulf Inc. v. Canadian Development Corp., 366 F.Supp. 374 (S.D. Tex., 1973); Annot., "Construction of 1968 Amendments of §14 of Securities Exchange Act of 1934, Dealing with Tender Offers," 6 A.L.R.Fed. 906 (1971). One has only to envision Arab money funnelled through a Dutch-controlled Canadian corporation, whose shares become collateral for a loan by a Detroit bank disbursed through a Chicago attorney, to see the problems of disclosure laws in this area. Second, after a purchase of property by a foreign investor, if further sales were made only outside the United States, this may constitute a violation of our civil rights statutes. See 42 U.S.C. §3604(a)-(b) (tit. VIII, Civil Rights Act of 1968). In one instance in Hawaii, the Japanese purchaser offered condominium units for sale only in Japan, but not in Hawaii. The Japanese might consider themselves an amalgam

Conclusion

The real estate settlement process when it involves a foreign purchaser is generating a need for the services of more than the usual number of real estate personnel. Finder-brokers and financial advisors (often banks) produce a web of American and foreign personnel working on the same transaction in its early stages and drawing on the expertise of American attorneys and title assurance institutions once properties have been located. Most investors interested in holding American property for its own sake are from English speaking or Western European countries; but most purchases are industrial sites for manufacturing. Investors from less developed countries make highly individualized purchases, but the more developed the source of the investment, the greater the likelihood is that investors will use mass-produced vehicles for investment (e.g., large investment trusts) or that foreign banks or pension funds will oversee the transaction.

Today, little use is made of American capital markets, but this may only be the result of unfamiliarity with American lenders and their loan/value ratios, which are higher than those in Europe (only 50% financing is common there). English-speaking investors tend to establish American corporate subsidiaries, but the use of foreign intermediaries for finding the properties and arranging financing is increasing. Only in the title-assuring stages of the transaction process does it become necessary to rely on Americans; this is so because of our unique process of title assurance, the likes of which are found in few other countries and which must be explained to foreign investors.

The framers of American recording laws intended that they provide notice of ownership and encumbrances on real property. Poor indexing and outdated record keeping has, however, prevented these laws from achieving this objective as far as the general public is concerned, for public records have become useable only by those skilled in examining them. In the case of foreigners seeking the notice-giving protection of these laws, this state of affairs results in an inability to formulate policy in American jurisdictions. Notice by recording binds Americans to honor foreign title-holdings while unable to ascertain their extent. We have

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149/ cont. of Asiatic races, but in Hawaii where the Japanese form a more distinguishable sector of the population, this offering might appear racially motivated. So where development results in offering properties for sale, foreign investors may have to give Americans a chance to buy on an equal footing with foreign purchasers. Also, Americans under-value their real property for accounting purposes, perhaps because of the real property tax imposed on it. Europeans do not, because its leasehold value is dependent on its present fair market value, not its purchase price; rents are calculated as a percent of its present value so that re-appraisals up-date its value annually. The investors' accountants have to reconcile these different foreign and American practices.

no tradition of expropriating foreign assets and properties. 150/ Our eminent domain codes require procedural regularity and just compensation for any state divestiture of title, total or partial, whether held by citizen or alien. 151/ But before alien titles become a problem, real or imagined, the many jurisdictions in the United States arguably have a concomitant right to know the extent and nature of foreign real property holdings here. American recording laws are presently ill-adapted to provide this information. In broader perspective, with the international legal system moving toward two somewhat anti-thetical goals--transnational investment codes 152/ regulating the flow of investments and sovereignty of a nation-state over its natural resources 153/--we would be unwise not to provide ourselves with information enabling us to decide what if any control, and over what types of properties, is necessary for the future. But information is only an abstract word for one by-product of institutions. And today American conveyancing institutions lack the capacity to generate the facts on alien property interests in the United States.

150/ Case of William Adam, American and British Claims Commission under Treaty of May 8, 1871, 3 Moore International Arbitrations 3066 (1898); Nichols, 1 Eminent Domain 4-20, -21 (1975); M. Katz & K. Brewster, International Transactions and Relations 832-33 (1960), contains a discussion of an alien's right to just compensation.

151/ Id.; G.A. Res. 1803, 17 U.N. GAOR (Dec. 19, 1962) states: "In such cases (expropriation), the owner shall be paid appropriate compensation, in accordance with the rules in force in the state taking such measures in the exercise of its sovereignty and in accordance with international law."

152/ J. Sanford & J. Costa, "International Trends in the Regulation of Foreign Investment," Library of Congress, Congressional Research Service (March 29, 1974) at CRS-26, CRS-32.

153/ G.A. Res. 3281, 29 U.N. GAOR (Dec. 12, 1974); S.C. Res. 3202, 6 U.N. SCOR (May 1, 1974); S.C. Res. 3201, 6 SCOR (May 1, 1974); G.A. Res. 1913, 27 U.N. GAOR (Dec. 5, 1974); G.A. Res. 1908, 27 U.N. GAOR (Aug. 2, 1974); G.A. Res. 2158, 21 U.N. GAOR (Nov. 28, 1966); G.A. Res. 1803, 17 U.N. GAOR (Dec. 19, 1962); G.A. Res. 626, 7 U.N. GAOR (Dec. 21, 1952); G.A. Res. 523, 6 U.N. GAOR (Jan. 12, 1952).

SOCIAL ATTITUDES AND VALUES ASSOCIATED WITH FOREIGN INVESTMENT AND OCCUPATION OF U.S. LAND

Gene F. Summers*

Introduction

Foreigners are increasing their participation in the U.S. economy by investing capital in corporations, partnerships and sole ownership. Investments are being made in virtually all markets, including resources such as minerals, timber, and in what is perhaps the primary resource of the nation--the land itself. The potential international and domestic effects of this activity are many and significant. Congressional hearings 1/ and the language of the Foreign Investment Study Act of 1974 point to the complexity of the issue and the scarcity of knowledge about the magnitude and scope of foreign investments. While Congressional concern focuses on the economic, legal and political ramifications, public reaction is another implication of foreign investment Congress should consider.

In testimony before the House Subcommittee on Foreign Economic Policy, Thomas L. Farmer stated that, "In general, much of the protest against foreign competition seems to come from a latent form of xenophobia, ethnic resentment, or more bluntly, racism." 2/ Racist attitudes are ill-founded and irrational. And racism can lead to

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1/ U.S. House of Representatives. Hearings before the Subcommittee on Foreign Economic Policy of the Committee on Foreign Affairs. 93rd Congress, 2nd Session. Washington, D.C., January 29, February 5, 21, 1974. U.S. Senate. Hearings before the Subcommittee on Foreign Commerce and Tourism of the Committee on Commerce. 93rd Congress, 2nd Session. Washington, D.C., March 7, 1974. U.S. Senate. Hearings before the Subcommittee on Foreign Commerce and Tourism of the Committee on Commerce. 94th Congress, 1st Session. Washington, D.C., May 7 and 12, 1975.

2/ Statement of Thomas L. Farmer, Chairman, Task Force on Foreign Investment in the United States, U.S. Chamber of Commerce, p. 10 in U.S. House of Representatives. Hearings before the Subcommittee on Foreign Economic Policy of the Committee on Foreign Affairs. 93rd Congress. 2nd Session. Washington, D.C., January 29, Feb. 5, 21, 1974.

determined campaigns against the disliked group which may become violent as in the case of anti-busing. But all attitudes of opposition cannot be dismissed as racist. The opposition may be well-reasoned and fully informed. Opposition to foreign investment may not come from racism. Even if it does, dismissing the opposition as prejudicial and ignorant could lead to serious disruption.

It is important to know whether opposition is based on prejudice and misinformation or represents a reasoned position. If it comes from an ill-informed position, knowing the nature of the misinformation is essential to an educational effort. How seriously the opposition needs to be taken depends upon its disruptive potential which rests upon social psychological as well as economic, legal, and political considerations. This section suggests alternative ways of monitoring and interpreting expressed opposition to foreign investment.

Monitoring Public Attitudes

There are at least three ways public response can be monitored: (1) Congressional constituent reactions, (2) statements of opinion leaders, and (3) public attitude survey. Understanding would be maximized by the systematic use of all three. 3/

Constituent Reactions

Members of Congress, especially members of the House of Representatives, constitute an established, visible instrument for assessing the public pulse on issues. When an event, such as sale of land to a foreign buyer, occurs, it is a virtual certainty that one or more members of Congress will have their attention drawn to the matter. In normal practice these reactions are noted by the Congressional delegate, responded to, and filed.

Although constituent reactions, as a measure of public response, are likely to result in a rather distorted understanding of attitudes toward foreign investment, this data source should not be ignored. Constituents who contact Congressmen obviously carry their attitudes into overt action, indicating rather strong feelings and the importance of their beliefs. Moreover, reacting constituents are likely to be opinion leaders in their local community. Consequently, their attitude may reflect and encourage the formation of similar attitudes among associates in their social ambiance.

Constituent reactions could be used more effectively as a monitoring devise if they were collected at regular intervals and tabulated. To

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3/ Cook, Stuart W. and Selltiz, Claire. "A Multiple-Indicator Approach to Attitude Measurement," Psychological Bulletin 62 (1964): 36-55. Summers, Gene F. (ed.). Attitude Measurement. Chicago: Rand McNally, 1970.

be sure, one would obtain only surface opinions in most instances. However, such a tabulation would provide some insight into the social location of public reaction, minimally by Congressional District.

They could be made still more useful for monitoring public response in two ways. First, constituents could be invited to explain more fully their reasons for the volunteered opinion(s) and to provide some information about their social location. A mail questionnaire or telephone interview could be used to obtain information.

Second, Congressional delegates might be prevailed upon to allow a mail questionnaire or telephone interview of a sample of their constituents. This would obtain less biased opinions than those expressed voluntarily by constituents. But even the sampling of constituents is risky for the simple reason that mailing lists maintained by Congressional delegates are compiled and services with explicit political motivations.

Opinion Leaders' Survey

A second strategy for maintaining an informed position is to systematically seek out and interview opinion leaders. The monitoring effort should focus on a sample of institutionally based, general-opinion leaders in groups most likely to be affected by foreign investment.

At least three institutional bases should be incorporated in this strategy: (1) public officials--especially local, (2) media writers--especially editorial staff, and (3) voluntary association officials. Opinion leaders should be selected from each institutional sphere. Listings of such persons should be readily available.

Within each institutional sphere the "population" of officials to be sampled should be further specified. For example, among public officials at the local level, one might wish to consider only County Board Presidents and Mayors. The County Agricultural Extension Agent in rural areas should also be included. Editorial staff of the media should be included. They should represent more than the mass media, although inclusion of the latter is absolutely essential. Persons responsible for the editorial policy of widely circulated newspapers, magazines, and newsletters of organizations which offer positions on public policy and public issues might conceivably be the primary "population" of media writers to be sampled. Voluntary association officials should include business, management, union, and other economic-oriented associations as well as political and social action oriented associations. Because there are so many associations, it would be necessary to select a sample.

National Attitude Survey

To accurately ascertain the public's attitude toward foreign investment in U.S. real estate, there is no substitute for speaking directly

to a systematic sample of the nation's citizens. Any serious attempt to understand and to monitor public reaction in this matter must incorporate a national attitude survey. The other two strategies are important in their own right because they reveal elements of the attitude formation and reinforcement processes which will be obscure in the public survey. However, they do not constitute a satisfactory alternative to the direct questioning of the people. At the very best, the first two strategies could produce evidence on which one might develop hypotheses regarding the shape and intensity of public sentiment.

A national attitude survey should incorporate four areas of focus. First, it should include questions to ascertain the respondent's general attitude toward foreign investment in U.S. real estate. But, in addition, it should include questions to ascertain specific attitudes toward various foreign groups, different types of investment, and several kinds of real estate. Items should be included to gauge feelings and probable courses of action in a variety of hypothetical investment situations.

Second, an effort should be made to identify those beliefs and values which support attitudes toward foreign investment. This is necessary to determine the extent to which opposition rests on misinformation. A reasoned diagnosis of an attitude requires this extended examination. Without it, one has only a listing of symptoms.

Third, information should be obtained regarding the individual's social location. This will indicate the social influences to which a person is exposed and the normative climate in which he lives. Among the items most relevant are age, sex, ethnicity, educational attainment, occupation, voluntary association affiliations, type of community, region, and length of residence. Social location is an important indicator of the likelihood that a group of people with a given viewpoint may exercise general influence in support of their views.

Finally, motivational sources of attitudes are as important diagnostically as the cognitive sources. Therefore, an effort should be made to determine the social well-being of the respondent. That is, what is the person's level of satisfaction with the conditions in which he lives, including the economic, social and political elements?

Reasons for Opposition

Public readiness to support or resist legislation restricting foreign investment in U.S. real estate is a function of the public's beliefs and feelings about foreigners, real estate, and investment.

Beliefs about issues are related to values and ideologies of the public.

In a pluralistic society incorporating numerous ideologies, conflicting attitudes may be assumed. If tied to strongly held ideologies, attitudinal differences can lead to overt conflict.

Attitudes may serve any of several psychological functions closely associated with feelings of threat, fear, hatred, or anger. 4/

An informed position must rest upon knowledge of the attitude components 5/ (beliefs, feelings, readiness to act), the central beliefs (values and ideologies (which spawn the attitudes, and the psychological functions served by them. 6/

A Combination of Reactions

The public's response to foreign investment is a combination of reactions to three separate objects; foreigners, investment and U.S. real estate. The gross response may be a simple accumulation of attitudes toward these three components. For example, imagine a person who has moderately positive feelings toward foreigners; who regards investment as a wise and desirable management practice; and who appreciates both the symbolic significance of U.S. real estate and its market value. Such a person would appear to have positive beliefs and feelings for all three objects. We, therefore, would expect him to have a positive attitude toward foreign investment in U.S. real estate. But it need not be so. Indeed, it may be one of opposition. The combination of the objects has an existence of its own; reactions to the combination need not be a simple summation of attitudes toward its ingredients.

4/ Katz, Daniel. "The Functional Approach to the Study of Attitudes," Public Opinion Quarterly, 24 (1960):163-204.

5/ Harding, J., Proshansky, H., Kutner, B., and Chein, I., "Prejudice and Ethnic Relations," pp. 37-76 in G. Lindzey and E. Aronson (editors). Handbook of Social Psychology, Vol. V (2nd ed.). Reading, Mass.: Addison-Wesley, 1969. Katz, Daniel and Stotland, Ezra. "A Preliminary Statement To A Theory of Attitude Structure and Change," pp. 423-475 in Sigmund Koch (editor), Psychology: A Study of A Science, Vol. 3. New York: McGraw-Hill, 1959. Krech, David, Crutchfield, Richard S., and Ballachey, Egerton L. Individual In Society. New York: McGraw-Hill, 1962. Summers, Gene F. (editor). Attitude Measurement. Chicago: Rand McNally, 1970.

6/ Bem, Daryl J. Beliefs, Attitudes and Human Affairs. Belmont, Calif.: Brooks/Cole Publishing Company, 1970. McGuire, W. J. "A syllogistic analysis of cognitive relationships," pp. 65-111 in C. I. Hovland and M. J. Rosenberg (eds.), Attitude Organization and Change. Hew Haven: Yale University Press, 1960. Rokeach, Milton. Beliefs, Attitudes and Values. San Francisco: Jossey-Bass, 1968. Williams, Robin M., Jr. American Society: A Sociological Interpretation. 2nd ed., Rev. New York: Knopf, 1960.

In considering attitudes toward foreigners, we must be aware also that foreigners are no more a homogeneous group than are Americans. Thus, if our goal is to interpret and understand the pulse of the nation, we must consider specific foreign groups in addition to the general category. A recent survey of Hawaiian residents illustrates this point.

Heller and Heller interviewed 413 Hawaiian residents in November and December, 1973. 7/ Among several questions asked were the following:

> "Do you think that investment in Hawaii by the residents of the other 49 states is good or bad for us?"
>
> "Do you think that Japanese investment is good or bad for us?

Japanese investment was regarded as bad by 38.5 percent of the Hawaiians interviewed, while only 19.4 percent considered investments by "residents of the other 49 states" to be bad. Admittedly, other U.S. citizens are not legal foreigners, but neither are they Hawaiians. The point is that all outsiders are not regarded in the same way. Thus, a reasoned diagnosis of public sentiment must examine specific foreign groups as well as the general category.

The same point may be made with respect to real estate since it means many things. When a person says he favors (or opposes) foreign investment in U.S. real estate, we must know whether he had in mind farm land, residential property, office buildings, forests, all of these, or something else. Reactions can be expected to vary according to the specific type of real estate involved.

And what meaning does investment hold for the person whose opinion we solicited? We can envision the following scenario of meanings: investment means buying, buying means owning, owning means control, and control by outsiders is threating.

> Question: "Should foreigners be allowed to invest in U.S. real estate?"
>
> Explicit Answer: "Absolutely not!"
>
> Implicit Answer: "I don't want foreigners owning our land and telling us what we can do with it. That's like giving the fox a den in the hen house."

7/ Heller, H. Robert and Heller, Emily E. Japanese Investment in the United States: With A Case Study of the Hawaiian Experience. New York: Praeger Publishers, 1974.

An important question is what do foreign investors plan to do with the real estate? An executive for a Wisconsin farmer's organization recently explained that opposition among Wisconsin farmers to foreign investment in U.S. farms comes mainly out of fear that through ownership foreigners might be able to influence U.S. farm policy to their advantage and to the disadvantage of U.S. citizen farmers. 8/ A similar concern was expressed regarding foreign investment in food and fiber processing industries.

Obviously, if we want to understand public response to a complex issue, we must probe for meanings which lie below the surface. The matter before us is complex. And to date it has not been probed at all. The Hellers' survey was the only one identified in our search of published literature. Thus, a first and essential step will be to ascertain the various interpretations given to the proposition by the public. This can be accomplished best by measuring attitudes toward several types of investment by various foreign groups. It would be desirable to include a range of hypothetical situations so that respondents combine the elements in their own subjective manner. The following statements illustrate the type of items to be used.

Russians should be allowed to purchase U.S. grain farms.

It is all right for Japanese companies to buy forests in the U.S.

Ownership of meat processing plants by West Germans is dangerous for U.S. farmers.

It would be wise to include a few statements which indicate investment in real estate by groups of U.S. citizens. By doing so we will be able to determine whether the opposition is to foreigners or to "outsiders" generally. For example, we might want to ask respondents how they feel about Chicago lawyers and doctors investing in grain farms.

It also will be important to ascertain what motives or purposes U.S. citizens attribute to foreign investors. When opposition rests on imputed motives, we need to know what they are. Comparing these attributions to foreigners' avowed purposes could prove helpful by revealing areas of misunderstanding. Through an educational effort these may be corrected.

Unfair Competition

When the intrusion of outsiders seems to threaten established patterns that provide satisfaction to individuals and groups, they arouse utilitarian attitudes. Thus, where purchase of land by foreigners

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8/ Personal interview.

creates competition, we may expect arousal of negative attitudes and a desire to stifle the intrusion.

On the contrary, when foreign investment offers a means of achieving personal or national goals, we might expect to find enthusiasm for such investments. This need not indicate a positive or favorable attitude toward foreigners, but rather an interpretation of their investment as instrumental to one's own needs or goals. Indeed, positive feelings for foreign investment may be tied to a negative attitude toward foreigners. A scenario is projected as in a con game: Lure them into making the investment at a high price, then ignore them, be uncooperative, and otherwise make operating the investment difficult so they will eventually sell the investment back at bargain prices.

Therefore, one might reasonably expect the strongest opposition to come from those persons and groups who are likely to be placed in direct competition with foreign investors. And strong opposition may be anticipated when those who see foreign investors as competitors also fail to see how the foreigners' investments can be turned into an advantage for themselves.

This is a likely situation in the case of farmers who hope to add to their current land holdings. Foreign investors seeking an investment that is secure from political instabilities may be quite willing and able to pay more than local farmers for U.S. agricultural land. Thus, the farmer is placed in a weak price bidding situation. Seeing no immediate advantage in the purchase of neighboring farms by foreign investors and recognizing a competitive handicap, the farmer will understandably react negatively.

Ideological Reactions

Ours is a pluralistic society incorporating various and sometimes opposing economic, political, social, and religious ideologies. Any of these ideologies can promote antagonism toward others. Political conservatism, Jeffersonian democracy, national isolationism, capitalism, socialism, white supremacy, fundamental Protestantism, populism, and agrarianism all contain beliefs and values which could provide a basis for opposition to foreigners buying U.S. real estate. No doubt other ideologies could serve the same purpose.

Ideologies which out-live their historical origins can become attached to new interests. The specific issues that gave birth to 18th Century agrarianism may be extinct. Nevertheless, the political and economic values they generated may today be used to justify support for governmental action to preserve the family farm, maintian price supports for agricultural commodities, and provide services to rural communities.

With the decline in family farms it is easy to understand why persons attached to them feel threatened. Persons who value family farms and who perceive the purchase of farm land by foreign investors as a further threat to their existence can be expected to voice opposition. The ideological base of anti-foreign investment attitudes need not involve land or land-related values. Political, race, ethnic, or religious oriented ideologies may serve the same purpose if they seem to threaten the status quo.

A recent study of Wisconsin residents 9/ indicates that adherants of the agrarian ideology tend to be more discontented, to have a more authoritarian attitude toward criminal justice, and to be more militantly anti-Communist than non-adherants. Strong commitment to the value of the family farm is even more to the point of our concern. The following two value statements were among those used to measure agrarianism.

> "The family farm is the best possible way to make sure that all Americans will have plenty to eat at reasonable prices."
>
> "The family farm is very important to democracy."

Residents indicating a strong endorsement of these statements were among those most discontent with society, most authoritarian, and most militant.

Threatened Community Autonomy

"In the face of overwhelming absentee-owned economic power, the effectiveness of self-government is limited... A West Virginia town government made up of lawyers representing timber and coal mining corporations is no more or no less than a 'colonial' government... Self-government is always better than good government." 10/ These thoughts express forcefully beliefs which emphasize the values of the integrity and autonomy of the local community. They often are integrated into more elaborate ideologies such as agrarianism and populism making them resistant to change. The important point for our purposes is to recognize the fact that any intrusion into the affairs of the local community is regarded by many citizens as a threat to its

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9/ Buttel, Frederick H. and Flinn, William L. "Sources and Consequences of Agrarian Values in American Society," Rural Sociology 40 (Summer 1975):134-151. Flinn, William L. and Johnson, Donald E. "Agrarianism Among Wisconsin Farmers," Rural Sociology 39 (Summer 1974):187-204.

10/ Rural America, Inc. Toward A Platform for Rural America. Washington, D.C., 1975. Page 11.

existence and to valued things which it represents. It does not matter who the intruder is. Foreigners, absentee landlords, or state and federal officials are all regarded in the same way, with thinly veiled hostility.

In addition to the ideological bases of this reaction, it rests on elementary social and psychological factors which further strengthen its stability and power as a motivating force. All human groups maintain their identity in part by creating boundaries which clarify membership. Furthermore, all groups lay claim to tangible objects which may signify group membership, and place especially great value on those items regarded as contributing to their collective well-being. Historically, land has been fundamental to in-group identity; especially among territorial groups such as bands, tribes, neighborhoods, communities, and nations. Wars and innumerable minor scrimmages have been fought over territorial disputes. Thus, it should be no surprise if Americans oppose the sale of U.S. real estate to foreigners.

Group allegiance is motivated largely by the group's ability (or that of its representatives) to satisfy its members' needs and desires, especially those they cannot achieve easily, efficiently or effectively alone. For example, if a person's needs to feel strong and powerful are thwarted, he may attempt to satisfy them by involving himself in a strong and powerful group. Personal needs often are satisfied through the accomplishments of groups with which the individual is affiliated. Thus, persons who regard power as central to their sense of self-worth and who lack power are very likely to be found in the ranks of groups which are powerful, which emphasize the importance of power, and which demand obedience from members.

There is nothing abnormal or aberrant about ego-defense or ego-enhancement through group identification which allows one to experience group exploits as if they were one's own. It is normal. Indeed, without it the group allegiance necessary for such desired things as national unity, community spirit, and the like would be seriously threatened. Nevertheless, it is important to recognize this process because it could help in understanding public response to foreign investment in U.S. real estate. Strong group identity and ego-defensive attitudes can be joined and may be exploited.

Demagogery

Foreign investors buying U.S. real estate are prime targets for demagogues. Exaggerating dangers that confront the nation (community, class, race, or ethnic group) in order to exploit existing negative attitudes toward out-groups is the stock in trade tactic of all forms of demagogery. And it works so effectively because it arouses ego-defensive attitudes of individuals. Hatred and hostility often have their origin in the accumulation of frustrations by the individual

over time. For example, ghetto life can build up anxieties and tensions which find expression in riots against white merchants, police, landlords, and other hated segments of the community. Similarly, the operator of an unprofitable farm may find release of his frustrations in hatred of out-groups. We can say confidently that living conditions which smother hopes and ambitions are prime nutrients for scapegoating.

Ego-defensive attitudes may be elicited by appeals to authority. 11/ The insecurity of the defensive person makes him especially vulnerable to authoritarian suggestions. A feeling of insecurity may come from any source regarded as authoritative, such as a White House statement denouncing foreign ownership of U.S. defense industries. While the release may be morally and ethically justified, it has the potential of eliciting anti-foreign attitudes based on ego-defensive needs.

Some form of social support may be the only encouragement needed to elicity ego-defensive attitudes. Thus, anti-foreign attitudes can be activated by invoking national security, the good of the community, or the sanctity of the family farm when foreigners are rumored to be buying U.S. land. Repressed hatred can be unleashed merely by providing moral justification for its expression and thus implying social support for the individual who expresses his hostility.

The point to remember is the fact that demagogery trades on the importance of group identification and its relation to ego-defenses. Ego-defensive individuals may generate unusually strong attachments to specific elements of group identity. At the same time, ego-defense mechanisms may feed hostile attitudes. Thus, perceived dangers to group honor, power, property, or other highly regarded attributes will activate hostile ego-defensive attitudes. And real estate which is viewed as "our land" is certain to be among these important attributes.

Group Influences

Because group influences are so vital to the formation and support of an individual's beliefs, psychological well-being, and goal achievements, they must be considered in our effort to understand attitudes toward foreign investment in U.S. real estate.

Apart from the emotional support individuals derive from group membership, groups also provide standards of judgment, or group norms. Historical origins of group norms notwithstanding, they help supply structure to ambiguous situations. When confronted with an unfamiliar issue or situation, persons turn to group members for advice or confirmation of their own tentative judgments. And of first importance are group leaders.

11/ Katz, op cit.

The role of influential persons and groups in shaping an opinion and in encouraging its verbal and behavioral expression has its existence in group influence. There are two types of influentials. 12/ The "specific" influential is one with whom the individual has face-to face contact. The "general" influential is one in whom the individual has confidence and whose opinions are held in high regard but with whom there is no face-to-face contact. Heads of formal associations and public figures are often general influentials for the rank and file. Through organization, or linking together, of groups in hierarchial fashion they are able to influence individual members in two ways. First, there is the direct communication via speeches, news conferences, printed articles, house magazines, etc. Second, by a two, three, four or more step process of face-to-face communication they get messages to the rank and file "personally."

This process is particularly important because it explains the feudal-like system of centers and subcenters which characterize public sentiment. While attitudes are individual attributes, the social location of persons with similar attitudes clearly has a pattern.

Thus, formally organized groups must be invited to express their views regarding foreign investments in U.S. real estate. Both official positions and the personal opinions of association leaders must be examined. There are many such associations. Among those most important are farmers' organizations, ethnic associations, unions, real estate associations, and political groups. Obviously, attitudes of rank and file members will not form a uniform consensus in such groups, but the reality of group influences must not be ignored. Formally organized groups have the resources to rally support for their point of view and can become formidable opposition. Therefore, a proper monitoring of public reaction to foreign investment should incorporate a means of hearing and understanding the position of relevant group leaders.

Social Location

People's attitudes, beliefs, and values derive for the most part from those of other people. An American learns about foreigners, the symbolic and economic value of real estate and the meaning of investment from people around him. What is learned is reinforced by the people with whom he associates. Groups differ substantially in their views toward foreign investment in U.S. real estate. Thus, individual differences largely reflect the differences of groups with which persons identify and affiliate.

12/ Katz, Elihu and Lazarsfeld, Paul F. Personal Influence. Glencoe, Ill.: Free Press, 1955. Katz, Elihu. "The Two-Step Flow of Communication: An Up-Date Report on A Hypothesis," Public Opinion Quarterly 21 (1957):61-78.

Another layer of social differentiation and structure significantly touches the life of an individual. People from different regions of the nation historically have different values and attitudes. Occupational categories similarly show a clustering of values and beliefs which presumably derive from common experiences in the world of work. Place of residence, ethnic origin, educational attainment, age, sex are other social locations that generate common experiences and help shape attitudes.

Social location is a significant indicator of the likelihood that a group of people with a given attitude toward foreign investment in U.S. real estate will exercise general influence in support of their viewpoint. Some social locations are recognized already for their position on foreign investments. For example farmers are generally opposed, while realtors appear favorable. But most other social locations of opposition and support have not been ascertained. They should be.

Summary

The primary concern of this section has been with the social attitudes of opposition to foreign investment in U.S. real estate and why. Since there are virtually no studies of public attitude toward foreign investment, the thrust of this section has been to propose a method of assessment and to suggest alternative reasons for opposition.

Public attitudes can be gauged by analyzing Congressional constituents' reactions, soliciting statements of opinion leaders in formal organizations, and by questioning the public directly. By noting the social locations of respondents it will be possible to determine who opposes foreign investments. The bases of social attitudes may be identified through careful assessment of statements of values, beliefs, feelings and behavioral intentions of individuals. All three modes of assessment are recommended. However, direct questioning of the public is the single most valuable method.

Attitudes associated with foreign investment may be expected to vary according to the nationality, ehtnicity and race of the investor. They also will vary from one type of investment to another. This variation comes from values, beliefs, and feelings associated with different investors, types of real estate, and the consequences of their investment, explicitly stated or imputed. Opposition may be expected to be strongest among those who see foreign investors as threatening things they value highly, who generally find life frustrating and stressful, or who live in a social and cultural milieu which emphasizes in-group identity.

Merely labelling anti-foreign investment attitudes as racism, ethnic resentment or xenophobia is hazardous. It could encourage Congress to dismiss those who voice opposition. Rather, Congress should be encouraged to learn whether opposition is based on prejudice and

misinformation or represents a reasoned position. If it comes from an ill-informed position, knowing the nature of the misinformation is essential to an educational effort. How seriously the opposition needs to be taken depends upon its potential for rallying resources to support its view. This need for information also should encourage Congress to authorize a study of the attitudes and values associated with foreign investment in U.S. real estate.

POLITICAL IMPLICATIONS OF FOREIGN INVESTMENT IN LAND IN THE UNITED STATES

Brian Loveman*

That governmental legislation and administrative regulations or practice create, diminish, or eliminate property rights and with them opportunities for economic gain, makes all sorts of land-use legislation and regulation highly political matters. If laws create, diminish, or eliminate economic opportunities, both in the narrow sense of monetary gain and in the broader sense of distributing legal authority to control, use, have access to, or exclude others from land and land-based resources, then manipulation of the participants and the processes whereby such decisions are made is of great interest to those potentially affected by property law and land-use decisions. This includes, in addition to explicitly regulatory land-use policies, other instruments such as tax policy, labor law, or export controls which may also indirectly regulate land use and proprietorship.

Several factors should be borne in mind: (1) the legal terms and conditions of ownership, whether by citizens or aliens, are political artifacts; (2) land owners will be concerned to some degree with the political process which determines these conditions; and (3) those persons whose income and occupation are directly affected by land-use regulations or restrictions (whether crop allotments, weed control, grazing, mineral leases, or zoning) will attempt to influence the processes wherein these decisions are made. These processes include elections of selected public officials, and the subsequent legislative and administrative deliberations and performance that bear on their particular interests. Based on our knowledge of the intervention into host-country politics by American investors overseas, and our limited experience with foreign investors in the United States, it would be naive to ignore the possibility that political activity will accompany foreign investment in the United States.1/

Thus an important political implication of foreign investment in the United States, including investment in land, is intervention by foreign interests into domestic politics. This includes lobbying and other

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1/ Recent disclosures of large bribes given by American and American-based multinationals to high officials in foreign governments leave little doubt about the potential for widespread "political" activity of foreign investors.

means of influencing local, state, and federal government policies, both with respect to domestic policy and foreign relations. In many cases, of course, domestic and foreign policy are inextricably intertwined. Employment and sales policies of firms can be influenced by blacklists of foreign nations. Export patterns of domestic firms can reflect the foreign policies of other governments. The separation between domestic and foreign policies, therefore, is often more semantic than real.

Foreign investors, like most investors, seek security for their investment and a reasonable return. Profit and security depend upon the business climate. This is largely politically determined, whether by local, state, or federal officials. Thus, investment by foreigners in the United States gives foreign interests a reason for participating in American politics at the local, state, and national levels. All business enterprise is subject to political regulation through the acts of legislators and administrators of public policy. This makes politics in a broad sense of concern to all persons and firms engaged in economic enterprise, including foreign investors.

Since the 1938 Foreign Agents Registration Act Americans have recognized the influence of foreign interests upon United States politics. Nevertheless, the provisions restricting or regulating alien lobbying of American policymakers have not been enforced rigorously. Lax enforcement has been accompanied by resistance from groups representing foreign interests to any further regulation of their activities. In 1966 the Senate Foreign Relations Committee, in its report on the 1966 amendment to the 1938 Registration Act noted that "the place of the old foreign agent has been taken by the lawyer-lobbyist and public relations counsel whose object is not to subvert or overthrow the United States government, but to influence its policies to the satisfaction of his particular client. . . ."2/

According to Stephen K. Bailey, from the passage of the 1942 Foreign Agents Registration Act until 1970 some 1500 agents registered as having foreign principals.3/ From time to time the negative impact of lobbyists for foreign interest is publicized, but no reliable estimates are available.4/ A basic problem in assessing such influence is measurement of the impact of lobbying activity--whether by domestic or foreign lobbies. This measurement problem is even more difficult in the case of lobbying of administrators of public programs than in regard to legislators. In any case, studies of administrative lobbying are infrequent.

At the state and local level our knowledge of lobbying activity is even less reliable. State laws on lobbying vary, but according to one

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2/ Congressional Quarterly, The Washington Lobby 2d ed., September 1974, p. 35.

3/ Congress in the Seventies (New York: St. Martins Press, 1970, p. 19.

4/ See, for example, Drew Pearson and Jack Anderson, The Case against Congress (New York: Simon & Schuster, 1968), chapter 13.

comprehensive survey in 1967, 43 states then had some sort of statute, generally unenforced and often unenforceable, purporting to regulate legislative lobbying, but "about all they have done is to forbid bribery. . . ."5/

This raises a number of questions. We know, for example, that American firms doing business overseas have influenced the outcome of elections and the making of public policy in Europe, Asia, and Latin America. Foreign investors in the United States have the same sort of incentives to influence particular United States elections at the local, state, and national levels. Have they? Do they now? We do not know.

Of particular concern from the perspective of investment in rural land is the importance of rural electoral districts in state legislatures and the United States Congress. The seniority system in Congress makes longevity a critical variable for committee assignments and chairmanships. Might it be possible to control or influence several key congressmen (or state legislators) by making large investments in agriculture or land-based enterprises in particular electoral districts? Legislators must be concerned with their own reelection; elections cost money--and the costs are rising. Local and state elections, in particular, are highly sensitive to small numbers of large contributors. This is a potential source of leverage for foreign investors in rural land or land-based enterprises.

In the case of the United States Congress, rural districts have in the past been clearly overrepresented in the assignment of committee chairmanships. This is particularly true in the case of Democratic congressmen.6/ Investment in rural land and land-based enterprises in key districts, combined with discreet electoral support, might enable foreign interests to secure valuable support in the United States Congress.

Americans and their designated officials must decide whether foreign investors have a legitimate interest in attempting to influence domestic policy-making. If, as in the past, the legitimacy of such activities (or their inevitability) is recognized, then decisions must be made concerning the limits of such lobbying by foreign investors and whether it is desirable for foreign investors to finance American political candidates. The implication here is clear. To the extent that foreign investors support candidates or effectively lobby public officials, American public policy is influenced to some unknown extent by foreign interest. This is no novelty, but it could make the basis for a highly demagogic electoral campaign precisely because the extent

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5/ James Fesler, ed., The 50 States and Their Local Governments (New York: Alfred A. Knopf, Inc., 1967), p. 250.

6/ See Barbara Hinckley, The Seniority System in Congress (Bloomington: Indiana University Press, 1971).

to which foreign firms and interests are a part of domestic policy-making is unknown and, given current legislation, is largely unknowable.

This problem is complicated by issues of extraterritoriality. In the past, American firms doing business overseas have felt obliged to carry out American foreign policy in regard to trade and other matters. Thus, for example, American firms in Argentina or Canada may have adversely affected the trade relations between those countries and Cuba because of American Cuban policy and restrictions on shipments of goods to Cuba. That is, despite the fact that these American firms were doing business in other nations, their trade policies were shaped by American foreign policy. Would (do) Americans accept similar impositions by foreign governments on firms doing business in the United States?

Several other problems further complicate the issue of foreign investment. If business practices are at variance with United States law (for example, the well-known tendency of large Japanese firms to work out "cooperative" strategies), how will these practices affect American economic policy? Or, if foreign investors are not just "investors" but also extensions of the public policies of their respective nations--as has obviously been the case with American investment overseas, to the extent of government insurance against the possibility of expropriation--then it is naive for the United States to treat foreign investors as if they were merely "business" interests. This is the case with respect to all foreign investors, not just those with investment in land or land-based enterprises.

But again, assuming that the United States economy and life style, as well as the national security, depend critically upon the land-based production of food and fiber, it would seem more than naive to allow foreign governments and enterprises to control large amounts of United States rural land and natural resources in a world where "there will be a desperate land shortage before the year 2000 if per capita land requirements and population growth rates remain as they are today."7/

United States Politics and the Special Case of Agricultural Land

As we approach the twenty-first century a substantial proportion of the world population is faced with the threat of malnutrition and starvation. We have already seen books published advocating the application of a policy of "triage" by the United States in its distribution of grain abroad--that is, recognizing that some nations are beyond help and that sending large food shipments to these nations is a waste of resources which could be dedicated to saving other peoples--especially those who have raw materials required by the American and world economy

7/ T. D. Meadows et al., The Limits to Growth (1972), p. 61.

and those which have a military value to the United States.8/ While American policy-makers are not as yet ready to explicitly adopt such a policy, it is clear that the "politics of food" has the potential to become the critical international concern in this century. Currently famine and malnutrition are persistent conditions of many third world peoples and of many of the poor in the industrial nations. As world population increases and the strain on the world food and fiber supply intensifies, control over land-based food and fiber production is a critical domestic and international political resource.

On the domestic scene, the ability of American agriculture to produce ever more food and fiber from the same land base has largely spared the United States the trauma of dramatic inflation--25 percent a year and up--that has confronted much of the world. Because of this agricultural potential, the United States can, at any time, drastically reduce imports if foreign exchange problems develop.

In contrast, the Soviet Union, Japan, many other industrial nations, and much of the third world cannot reduce their imports without seriously affecting the food supply of their populations and, in many cases, producing political instability. In the area of food and fiber production even more than in other sectors, the critical link between economics and politics is apparent. A strong national agricultural sector is a significant political resource both domestically and internationally. Agriculture, broadly understood, has provided a "cushion" for domestic politics in the United States as well as potential leverage in international relations. Thus, from an international and domestic political standpoint, there is no question that agricultural land is special.

In addition to the politico-economic importance of agricultural land, there are also certain other special characteristics of land. The sentiment or attachment to land as a symbol of community or nationality makes Americans, as well as most other peoples, particularly sensitive to highly visible, large-scale control of land by foreign interests. Whether this be a "rational" sentiment or not, it is a real one. It is real enough so that many states have taken some action to restrict or regulate foreign ownership of rural land. Much of this state legislation has not faced the test of extensive litigation, particularly with respect to its implications should it disrupt relations with other nations. Nevertheless, it is necessary to recognize the symbolic specialness of land as an integral aspect of community and nationality. To overturn state legislation would involve heavy political costs. Any effort to do so might result in such a substantial increase in the political saliency of this issue as to make such legislation impossible

8/ William Paddock and Paul Paddock, "Proposal for the Use of American Food: 'Triage,'" in Walt Anderson, ed., Politics and Environment (Goodyear, 1970), pp. 34-46; from Famine 1975! America's Decision: Who Will Survive (Pacific Palisades, Calif.: LIttle Brown & Co., 1967).

to enact. In addition, challenges to state legislation might intensify the racial and ethnic prejudices which underlie much of the legislation restricting foreign investment in land,9/ and offend other nations in the process.

Thus, we must conclude that land (and agricultural land in particular), is special from both an economic and political standpoint. Its economic importance is not likely to decline in the next several decades if forecasts on world population growth and food and fiber needs hold true. Good farm land and water, in particular, will become increasingly scarce in relation to world demand for food and fiber. National, racial, and ethnic identification also show no sign of decline, thus making unlikely any lessened resistance or resentment by Americans to large-scale foreign control of American land.

The Politics of Landownership and Land-Use Control

An answer to the questions surrounding foreign investment in land presupposes a consideration of the political and legal meaning of ownership of land and land-based resources in the United States in the 1970s. What does anyone, including an alien investor, "own" when he or she acquires land?

In testimony before the Subcommittee on Foreign Commerce and Tourism of the Committee on Commerce (United States Senate, March 7, 1974) Deane R. Hinton, Deputy Director, Council on International Economic Policy, told Senator Inouye:10/

> I have seen some newspaper stories saying that Kuwait is buying land in South Carolina. . . . I think there is a question that has to be asked, which, put in the crudest form, is, "So What."

9/ As early as 1907 attempts were made in the California legislature to pass bills to exclude Japanese landowners. One of those backing such a bill declared: "I would rather every foot of California was in its native wilderness than to be cursed by the foot of those yellow invaders, who are a curse to the country, a menace to our institutions, and destructive of every principle of Americanism. I want no aliens, white, red, black, or yellow to own a foot of land in the State of California." After California finally passed legislation to exclude aliens (1913), the Attorney General of California and an author of the act declared: "The fundamental basis of all legislation upon this subject, State and Federal, has been, and is, race undesirability. . . . The simple and single question is, is the race desirable? . . ." See Milton R. Konivitz, The Alien and Asiatic in American Law (Ithaca: Cornell University Press, 1946), pp. 160-61.

10/ U. S., Congress, Senate, Committee on Commerce Foreign Investment in the United States, Hearings before a Subcommittee on Foreign Commerce and Tourism on S. 2840, 93d Cong., 2d sess., March 7, 1974, p. 171.

Any legislative effort to limit or further regulate foreign investment in land or agricultural land ought first to address this question directly. But to do so requires a more general understanding of the political meaning of property in land and of alternative proprietary institutions.

Basic human needs such as food and shelter have been and remain contingent on access to land and land-associated resources. From the earliest times disputes over control and use of landed territory have occasioned conflict among human beings. In addition to its use-value, particular tracts of land or territory serve as the basis for family ties, local identity, and nationalism. Citizenship is often tied to birthplace, or birthplace of parents--a basic link between territory and residency and legal rights.

Until quite recently, ownership or control of land went hand in hand with political authority and political power. This pattern has by no means entirely disappeared. In many parts of the third world large rural estates retain feudal-like or slave-like land tenure and labor systems. Even in Europe and the United States landowners or mine operators often still control the daily lives of "their" workers, and influence their votes on election day.

Nevertheless, the current position of landowners in the United States is a far cry from that of a medieval baron. Ownership no longer entails the unlimited discretion of use, abuse, control, or sale of land without reference to a vast array of legislative and administrative restrictions. Land use may be subject to incentive systems such as taxation, credits, and subsidies. Externally imposed land-use policies may legally designate crop zones, minimum standards of productivity, conditions of forest exploitation, and grazing limits. The legal rights of landed proprietors in relation to the physical resources that they claim as property depend upon the existing system of property law, and the complementary legislation that directly or indirectly regulates use and disposition of these resources (including land-use regulations, taxation, labor law, and so on). Local, state and federal legislation can, through use of the police power, prescribe, limit, or prohibit particular land-use patterns. Commercial operations, labor relations, safety practices--in short, most production and commercial activities on land-based enterprises are potentially subject to regulations of one form or another.

Most land law in the United States, strictly interpreted, is state and local, but concern with environmental protection, interstate commerce, national security, and control of foreign relations gives the federal government wide latitude for action in regard to control and regulation of land-based enterprises. The most difficult constitutional questions raised by such regulation, whether by federal, state, or local governments, involve (1) the legitimate scope of the police power and (2) the so-called "taking issue"--that is, the point at which regulation or limitation of use is equivalent in effects (i.e.,

reduces economic value so substantially) as to require exercise of the powers of eminent domain (public purchase at a fair market price).

In regard to the first issue, there exists no hard legal definition of the limits of the police power of local, state, or federal governments so long as legislation or regulations bear a rational relationship to a legitimate public interest within the constitutional authority of the government jurisdiction in question. The elasticity of such constitutional concepts as national security, or interstate commerce, allows for the continual evolution of the police power as social, economic, and political conditions change. The trend in the 1970s in regard to land and resource-use regulation, in particular, has been to expand greatly the range and complexity of regulatory measures. Indeed, where the public welfare is involved, it is not clear that any permanent limits exist on government legislation or regulation. Whether in the extirpation of weeds or the sale of production to overseas customers, government regulation and control of private land-based enterprise are theoretically possible by diverse governmental jurisdictions, if such regulation is judged in the public welfare by the responsible public officials.

The second issue--the "taking issue"--introduces a question of appropriate means whereby to accomplish public purpose. The Fifth Amendment to the United States Constitution specifies ". . . . nor shall private property be taken for public use without just compensation." In the now well-known case of Pennsylvania Coal Company v. Mahon, Justice Holmes elaborated an opinion that established as precedent:

> The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.11/

Thus, if property values are diminished to some (to be determined) extent, then a "taking" occurs, requiring the exercise of the power of eminent domain and the payment of just compensation. However, there is no general rule to define when regulation becomes "taking." And,

> the decisions of the courts show a remarkable elasticity in the concept of "taking." The more reasonable and necessary the regulation seems, the more willing have courts shown themselves to permit the resulting loss in value to the property.12/

Whereas in certain instances regulation may be ruled a taking (and therefore require exercise of eminent domain) it remains the case that the legislative and administrative authority of local, state,

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11/ 260 U. S. at 415.

12/ Jan Krasnowiecki and Ann Louise Strong, "Compensable Regulations for Open Space," Journal of the American Institute of Planners 24 (1963): 89.

and federal governments, in conjunction and concurrently, can prescribe, limit, prohibit, or ignore almost any conceivable use of land or land-based resources, depending upon the current assessment of the public welfare and its relation to any particular land-use (or non-use) pattern.

In the short run there will always exist politically, economically, socially, or culturally determined limitations on the exercise of the police power to regulate private property rights. However, as social and economic changes occur or crises arise (e.g., energy, pollution, food shortages) the concessionary nature of private property (that is, its legislative rather than natural right origins) allows very substantial direction and limitation of private proprietors and landowners--whether citizens or aliens.

Thus, theoretically at least, any use of land or disposition of the products of the land which conflict with the public welfare or national security are subject to regulation or prohibition. Ownership of land, whether by citizens or aliens, is subject to any limitations on use, production patterns or disposition of products legislated by local, state, or federal government.

However, it is common knowledge in the United States that large corporate enterprises are highly successful in influencing public policy. The theoretical capability of local, state, and federal government to control and regulate proprietary interests is oftentimes transformed in practice into control by those interests of legislators and regulatory officials. Regulatory commissions protect the industries they are supposed to regulate.13/ The real estate industry, agribusiness, and large corporations engaged in land-based production, like their counterparts in other economic activities, persistently and often successfully lobby at the local, state, and federal levels to protect their perceived interests. There is every reason to expect foreign investors to do likewise.

What Do Other Nations Do About Foreign Investment in Land?

There are numerous approaches to foreign investment in land in the nations of the world today. Some countries, like the United States, have little if any, national restrictions upon foreign investment in land. In other countries the limitations placed upon domestic investment in land also limits severely the influence of foreign investment in this area. (See the cases of Peru and Chile below.) In still other countries there is definite discrimination against or prohibition upon foreign investment in land in addition to regulations governing domestic investors.

In much of the so-called third world the recent emergence from colonial rule or semifeudal economic conditions makes the political significance

13/ See, for example, Louis M. Kohlmeir, Jr., The Regulators (New York: Harper & Row, 1969).

of agricultural land, in particular, more obvious than it is in a complex industrial society like the United States. Food deficits and the need to expend large amounts of hard-to-earn foreign exchange in order to feed their populations makes agrarian reform and coordinated land use policies highly salient in national politics. In many cases strict limits are placed on the amount of rural land that can be held privately by individuals or companies, whether national or foreign. In some cases foreign ownership is prohibited or severely restricted. (Obviously in the socialist bloc no foreign investment in rural land is permitted.) There do remain, however, numerous third world countries where foreigners can invest in agricultural land. In some instances large American enterprises control vital sectors of a particular country's economy through ownership of rural land and land-based enterprises which supply a large share of those nations foreign exchange earnings.

The industrial nations typically have a more liberal policy toward foreign investors in rural land than do third world nations, both because agriculture is a less critical (though still important) sector of the economy and because land has ceased to be the symbol and source of political power that it was in the past. This does not mean that land ownership is unencumbered by numerous obligations and land use or agricultural export policies. It merely means that the current political salience of rural land in the industrial nations is not quite so great as in the third world. Even here, however, there are obvious exceptions, for example, southern Italy, France, or Denmark.

There is currently available no comprehensive survey of comparative cross-national data on property and land law as it applies to foreign investors. Such a survey was initiated as part of this study but time and resource constraints permitted only a modest beginning. If completed (and continually updated), such a survey would be of great value to American policy-makers and potential investors in other nations. While a comprehensive, cross-national survey of policies toward foreign investment in land is not available, the following case studies illustrate certain generic policy approaches to foreign investment in agriculture and rural land. These approaches are: (1) total prohibition, (2) partial prohibition and conditioned investment, (3) conditioned investment, (4) general restrictions upon private agricultural holdings, and (5) agriculturally-related legislation which affects foreign investment in agricultural land and land-based enterprises.

Alternative Policies toward Foreign Investment in Rural Land: Cases

Total prohibition of foreign investment in rural land is a policy measure which, if strictly implemented, avoids the political implications of such investment on the domestic economy and political system. It is a policy favored by socialist nations and a number of third world countries.

Examples:

United Arab Republic --Act 15 Prohibiting Foreigners from Being Owners of Agricultural Land, 14 January 1953.

1. Foreigners, whether they be individuals or judicial persons, are hereby prohibited from being owners of agricultural or similar land, uncultivated land or desert land in the United Arab Republic. This prohibition shall apply to full ownership, bare ownership and to the right of usufruct. . . .

Iraq --Law No. 38 of 1961 as Amended by Law No. 82, 1964 concerning the ownership of immovable property by foreigners in Iraq.

4. A foreigner shall not own any immovable property in Iraq through any means for the acquisition of ownership, and may not participate in the auction for the sale of such property, except after the fulfillment of the following conditions and the obtainment of approval of the Minister of Interior.

   (a) That he has resided in Iraq for a period of not less than seven years.

   (b) That there are no administrative or military reasons withholding such ownership.

   (c) That the property is not situated near the Iraqui frontier for a distance of less than 30 kilometers.

   (d) That the property is not an agricultural land or a Miri [State] land of any kind whatsoever. . . .

5. The ownership of immovable property by a foreigner in Iraq shall not exceed a house for residence, and an office for work, if he, himself, practices a profession. A share in an undivided property shall be deemed for this purpose, a complete ownership.

Iraq, as well as Egypt, make special exceptions for other Arabs, in particular, Palestinians. But for all practical purposes other foreigners are excluded from acquisition of rural or agricultural land.

Partial Prohibition and Conditioned Investment

In some countries foreign investors are excluded from particular types of agricultural pursuits or from acquisition of rural land in certain areas of the country. In addition, any purchase by foreign interests of rural land is subject to registration, government approval and, sometimes, limits on the proportion of foreign capital invested in land-based enterprises.

Example:

Mexico --Foreigners who wish to invest in property or to engage in business in Mexico must agree that they will be considered as Mexican nationals, waiving the right of diplomatic protection of their home government. Under Article 27 of the Mexican constitution this agreement is a prerequisite for the acquisition of land, water rights, or mining concessions by foreigners. The agreement is contained in investment permits issued by the Ministry of Foreign Relations, except where foreigners are expressly excluded from owning any interest in the company and by law must be inserted in the company's articles of incorporation and stock certificates.14/

Article 27 of the Mexican Constitution also provides:

> Only Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership of lands, waters and their accessions or to obtain concessions of exploitation of mines or waters. The State may grant the same right to foreigners, provided they agree before the Ministry of Foreign Relations to be considered nationals with respect to such properties and not to invoke, therefore, the protection of their governments for anything referring thereto; under penalty, in case of the breach of the agreement, of forfeiting in favor of the Nation the properties they have acquired by virtue of the same. Within a zone of one hundred kilometers from the borders and fifty from the seacoasts foreigners may not acquire for any reason direct ownership of lands and waters.

Thus the Mexican State has a discretionary authority to allow foreign investors to acquire rural land outside the prohibited zones. However, special conditions are imposed upon those who wish to acquire agricultural land. In the case of foreign individuals, the practice of the Ministry of Internal Affairs not to allow immigrants to acquire more land than is necessary for a dwelling limits the acquisition of agricultural land. Investments in agriculture may be made by other aliens and foreign companies through the medium of a company incorporated under Mexican law.15/ However, to prevent the veiling of the true ownership of rural land, commercial stock companies are prohibited from acquiring, possessing, or administering rural agricultural properties. This provision applies to the stock corporation (sociedad anónima) and the limited partnership with shares (sociedad en comandita por acciónes). It does not exclude other types of companies, for example, the limited liability company (sociedad de responsibilidad limitada).

In addition, companies in which foreigners hold a majority interest are not issued permits for the acquisition of agricultural land. However,

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14/ Harry K. Wright, Foreign Enterprise in Mexico (Chapel Hill: University of North Carolina Press, 1971), p. 97.

15/ Ibid., p. 125.

it is sometimes possible to circumvent this restriction through the vehicle of another Mexican company, no matter the nationality of its shareholders. It is possible, therefore, for a foreign-controlled Mexican company, such as a stock corporation, to have a majority interest in an agricultural landholding company. Likewise, leases of agricultural land for periods of up to ten years require no permit, offering another vehicle to obtain temporary control of agricultrual land.

Mexican law also restricts the amount of agricultural land that can be held privately, whether by foreigners or nationals. The restrictions, range from 100 hectares (247 acres) to 800 hectares (1976 acres), depending upon the quality of land and the use to which it is put. While these restrictions apply to nationals and foreigners alike, they are a further limitation upon the concentration of large amounts of agricultural land in the hands of foreign interests.

Conditioned Investment

Without restricting outright the investment in rural land by foreign interests, some nations place conditions upon foreign investment that limit the attractiveness of investment and, at the same time, protect the nation against extensive foreign control over rural land resources. Sometimes this conditioned investment is combined with more general restrictions on private ownership of land, applicable to both nationals and foreigners alike.

Examples:

Peru --In Peru the general law of industries requires that 100 percent owned foreign firms must contract to sell 66 percent of their capital to the State at the end of a specified contract period. If foreign capital amounts to less, for example, 75 percent interest, then up to 50 percent must be sold to the State after the agreed-upon contract period. In national firms, foreign capital cannot, in principle, acquire more than 33 percent interest.

With respect to agriculture in particular, the agrarian reform law of 1968 (and as later amended) contains a number of provisions to prohibit or discourage foreign investment. Stock corporations (sociedades anonimas) and limited liability companies as well as limited partnerships are prohibited from holding agricultural land. Acreage limitations restrict the size of agricultural holdings legally owned by private owners, depending upon the quality of land and type of use. Under this legislation, extensive foreign-owned agricultural interests have been expropriated by the Peruvian State for land reform projects.

Algeria --Investment Code of 1966.

The Algerian Investment Code of 1966 sets down certain basic principles regulating foreign investment in that nation. First, Algerian and

foreign legal and physical persons are allowed to invest in the tourist and industrial sectors in order to increase the nation's economic productivity. Second, in sectors recognized as being vital to the national economy, the State alone has the authority to carry out investment projects, but it may, if necessary, associate itself with domestic or foreign private capital. Different sized investment proposals are subject to different scrutiny and review procedures, including review by the National Investment Commission. The "flexibility" of this kind of code allows whatever government is currently in power to determine the "necessity" of any particular foreign investment proposal. It also means, however, that the security of foreign investment is uncertain, whether in agriculture or in other sectors of the economy.

General Restrictions upon Private Agricultural Holdings

In many countries penetration of the agricultural sector by foreign investors other than resident aliens is effectively limited by efforts to prevent concentration of agricultural land, to protect peasant or family farmers, or to prohibit acquisition of farmland by corporations, limited partnerships, or other large commercial interests.

Examples:

Denmark --Act Concerning Agricultural Holdings, 1967.

20. Acquisition of ownership of agricultural holdings or parts thereof not situated in areas which appear as inner zones in Town Development Plans shall be subject to the authorization of the Minister of Agriculture if the person acquiring the holding is a company, association or other society, a public or private institution, foundation, an estate or a foreign public agency. . . .

21. Authorizations under Article 20 above may be granted only:

    (a) when acquisition takes place with a veiw to non-agricultural use as specified in Article 4, paragraph 1 [subject to previous approval];

    (b) when acquisition takes place with a view to using the land for experimental research or plant breeding activities.

    (c) when acquisition takes place for the purpose of engaging in agricultural production of a particularly speculative nature or of a type requiring particularly high capital investment;

    (d) when special circumstances so justify.

23. Authorizations under Articles 19 and 21 above may be limited in time and made conditional.

25. No person whose right to acquire agricultural holdings is subject to the authorization of the Minister of Agriculture may, without the authorization of the Minister of Agriculture, take a mortgage on such a holding for a period exceeding six months.

Chile --Agrarian Reform Law of 1967 (Law 16.640).

The Chilean agrarian reform law of 1967 restricts private ownership of rural property to the equivalent of eighty "basic irrigated" hectares in the central valley of the country. A table of equivalents for different regions of the country, depending upon soil quality and land use, defines the physical limitations for private holdings in diverse parts of the country. Land in excess of the maximum is subject to expropriation for land reform projects. Corporate agriculture is prohibited, with minor exceptions. While the application of this law is subject to a great amount of interpretation it has effectively excluded nonresident alien investment in Chilean agriculture to any considerable degree, without explicitly outlawing such investment.

Another law prohibited subdivision of farm land without permission of the Land Reform Agency (CORA) and made nonexpropriation contingent on good labor relations and compliance with all social or labor legislation, in addition to productivity criteria established by the Land Reform Agency. While these provisions apply to foreigners and nationals alike, they are not designed to attract investments from large foreign firms or multinationals in Chilean agriculture.

Agriculturally Related Legislation

In additon to the various prohibitions or restrictions upon foreign investment in rural land already mentioned, foreign control of rural land-based activity can also be regulated through restrictions of foreign participation in credit, commerce, or other economic endeavors. In a complex modern economy, agriculture or other land-based activities are tied to banking and credit institutions, suppliers of inputs, commodity exchanges, import-export firms, and so on. If the real concern of a nation is not simply control over rural land by foreigners, but also control by foreign interests over the products of the land, then other legal measures may also be employed.

Example:

France --Ordinance No. 67-812, Relating to the Marketing of Cereals, 1967.

1. The marketing of cereals held by producers shall be carried out exclusively through physical or legal persons approved for the purpose and designated as approved collection agents.

The title of approved collection agent shall be granted to persons who prove:

that they deal in cereals for the requirements of their industries;

that they have at their disposal, in France, warehouses recognized as being of an adequate capacity and suitable for the proper preservation of cereals; or

that, without having such warehouses in France at their disposal and restricting their cereal collection activities therein to the purchase of standing crops and direct exportation, to the exclusion of any and all storage and resale operations, they are qualified or approved for the collection of cereals in another Member State of the European Economic Community.

2. Approval as a collection agent is further subject to the following conditions:

As regards physical persons:

that they have their real domicile, or a domicile of choice, in France;

that they are citizens of France or of one of the Member States of the European Economic Community;

that they meet the conditions of morality and solvency laid down in Article 6, paragraph (2), of the text attached to the Decree of Codification of 23 November 1937;

that if they are tradesmen, they are entered in the Register of Trade.

As regards legal persons:

that they are organized in accordance with the legislation of France or one of the Member States of the European Economic Community;

that their registered offices, or their main offices, or their principal establishment are in the European Economic Community;

that if their registered offices are not in France, they have there a domicile of choice;

that the persons entitled to manage, administer, or direct meet the conditions laid down in Article 6, paragraph (2)

of the text attached to the Decree of Codification of 23 November 1937;

that, if they engage in trade, they are entered in the Register of Trade, unless they are exempted from such entry.

While a number of agreements among the partners in the European Economic Community have reduced the restrictions on member-nation foreign investments in rural land and agriculture of other members, there remain numerous exclusions, particularly in the field of agriculture, for members and nonmembers alike.

Thus foreign ownership of rural land is restricted in many nations. It may be done through literal restrictions upon foreign investment in land and further restrictions on private investment in rural land, whether national or foreign, or through agriculturally-related legislation. Economic and political implications of these diverse approaches to foreign investment in rural land have not been systematically studied. There is need for additional basic data collection in regard to foreign investment policies and administration. Also needed is more evaluative research on the consequences, under varying conditions, of different approaches to foreign investment and foreign investment in rural land in particular.

The Need for Information

The limited number of exemplary cases presented above illustrates a great diversity in approaches to investment in rural land. But in order to make intelligent choices for the United States (or individual states of the Union) it is first necessary to identify foreign investors in rural land. There is presently no practical way to identify these alien investors. (Recent legislation in Iowa described elsewhere in this report is a start in that direction.) There are many legal devices available to foreign or domestic investors who wish to veil their interest in rural land or land-based enterprise. For example, recent controversy over Japanese investment in the Westlands Water District in California indicates the facility with which limited partnerships and syndicates can acquire substantial amounts of valuable rural land even when, in theory, the land is protected by acreage limitations and exclusion of absentee owners.

This brings us to a basic question. Do citizens in general have a right to know who owns America's land? Does the right to privacy and freedom from extensive government surveillance for individuals, which most Americans agree must be protected, mean also that public land records must be a labyrinth? More particularly, what justification is there for allowing large enterprises, whether foreign or domestic, to circumvent the intent of reclamation law or other legislation through complex transactions which make the identity of actual owners almost impossible to determine?

If Americans are to know the effects of significant foreign investment in land or agricultural land, in particular, we must be able to identify systematically foreign investment in this sector. There is no constitutional or legal reason for shielding important investments by aliens in rural America from public registration and scrutiny. There are no insurmountable political or administrative barriers to developing a national registry of significant foreign investment in rural land. In order to limit the administrative burden, registration requirements could be applied to a limited range of investments, whose amount and/or acreage could be determined on a regional or state-wide basis. Congressional or state action in this area could provide useful information without threatening, in any other way, the business freedom now enjoyed by foreign firms or individuals. National legislation in this area would assure the development of uniform reporting procedures and requirements for would-be foreign investors.

Although the Department of Agriculture did not oppose legislation (S1303) proposed in 1975 which would have required reporting of foreign investment in agricultural real estate, it held that "At present agricultural real estate prices, a $50,000 minimum would require reporting of almost all sales as small as 50 acres of Corn Belt real estate. The administrative burden would be excessive."16/ Therefore, in designing the reporting criteria, the expertise of the Department of Agriculture should be taken into account in order to avoid an undue administrative burden.

If a registration program were limited to nonresident foreign investment there would be little domestic concern with further invasion of privacy by federal or state government--a legitimate and urgent political issue in the post-Watergate era of American politics. Over the long run, however, the desire of the American people to know "who runs America" will lead to proposals for a more general survey of effective land ownership and control, especially if the current trends toward concentration of rural proprietorship continues with the concomitant erosion of the family farm sector. American agribusiness will probably resist information gathering about or regulation of its activities as it has resisted effective implementation of existing legislation which threatens its interests (e.g., reclamation law).

International Practice and Problems of Reciprocity: Data Collection and Regulation

The extent and political significance of foreign investment in rural land and natural resources varies greatly from nation to nation. In the third world countries (the relatively less industrialized economies)

16/ See U. S., Congress, Senate, Committee on Commerce, Foreign Investment Legislation, Hearings before a Subcommittee on Foreign Commerce and Tourism on S. 329, S. 995, S. 1303 and Amendment No. 393. 94th Cong., 1st sess., May 7 and 12, 1975, p. 107.

control over land and natural resources tends to be much more important politically and economically than is the case in the United States or more industrialized nations.

Where particular agricultural commodities or minerals constitute the basic core of a nation's economy or foreign exchange earnings (sugar in Cuba, copper in Chile, tin in Bolivia, and so on) control by foreigners over rural land or land-based enterprises means considerable leverage by foreigners over the revenues of the government and the performance of the economy. Political stability and the success of particular politicians often turns on the success of the economy. Where the basic elements of the economy are in the control of aliens, sensitivity to foreign investment is understandable (as in some of the cases described above). Therefore, the strict application of reciprocity between the United States and most third world nations in regard to the terms of foreign investment in the respective countries is both unreasonable and unnecessary at this time.

For the most part, in any case, there is little danger that Chilean, Venezuelan, or Malaysian investors will acquire large enough amounts of land in the United States to significantly affect the United States economy or politics. The likely sources of large-scale foreign investment in American rural land are the traditional investors in the United States--Canada, United Kingdom, Western Europe, Japan--and now, perhaps, Arab interests. Interestingly, while by and large American investment in the third world (including the Arab nations) concentrated, until recently, upon natural resources, including rural land, this is not the case in respect to United States investment in Western Europe, or Japan--where manufacturing investment has predominated. Taking farm land, in particular, United States holdings in Japan or Western Europe are negligible.

Thus, a selective restriction or regulation of foreign investment in rural land in the United States would not threaten significant United States investments abroad in Japan or Western Europe if parallel or retaliatory measures were adopted. Efforts to collect information concerning the extent of foreign investment in United States land without any further restrictions or regulations would pose even less of a problem.

This is not the case, however, with respect to third world nations, where United States enterprises have substantial investments in land and natural resources. Here policy problems are more delicate, given the diversity of land legislation and foreign investment regulations ranging from strict requirements for regulations and controls (e.g., Mexico) to negligible controls (e.g., Colombia). In most of the third world, however, monitoring of foreign investment is widely accepted. An initial step in this direction would represent no threat, challenge, or provocation to most United States trading partners.

This is especially true with respect to the monitoring of foreign investment and requirements for registration. American practice is so

much more liberal than that of most of the world that there is a broad latitude for innovation in the United States before foreign investment is subjected to even the sort of monitoring which a majority of third world nations (and increasingly, industrial countries, for example Canada's recent legislation) take for granted. Therefore, if Congress should decide to provide for a system of registration of significant foreign investment in rural land, or more generally for that matter, there should be few, if any, diplomatic protests or international repercussions.

On the other hand, should precipitous action be taken to restrict or regulate foreign investment in rural land in the United States, at the national level, such action could not fail to have repercussions with the United States' trading partners. At present, Western European nations and Canada do not restrict important investment by United States' interests in rural land, despite the restrictions imposed by state governments in the United States on foreign investors. Restrictive legislation by the United States federal government, however, would at least raise serious questions about a continued liberalization of international capital flows.

The Politics of Information and Control

While it is politically possible and administratively practical for the United States to require registration of significant foreign investment in rural land, registration is, in a sense, the beginning of control. Public scrutiny may follow public visibility. And, in a sense, the threat of scrutiny of significant foreign investment may also be perceived as a threat to domestic agribusiness. Regulation of the activities of foreign investment in rural land and land-based enterprises would provide a landmark for the monitoring of domestic agribusiness.

It is not just concentration of large amounts of rural land and natural resources in the hands of alien investors which is a threat to the people of the United States. Any extreme concentration of rural land ownership is both an economic and political threat. There are recent trends, particularly in California agriculture, toward domination by relatively small numbers of agribusiness or nonfarming corporations. Regulations to provide easily accessible information on the real owners of America's rural land will most likely see much of corporate America in alliance with those foreign interests who do not wish to subject their investments in rural land to public scrutiny.

Thus the ultimate political implications of regulation of foreign investment in United States rural land may extend to a general reconsideration of American land and agricultural policies--in light of

recent demands for "land reform" in the United States.17/ Whether undertaken at the national level or by the states, any serious effort toward acreage limitations, limits on corporate or tax-shelter farmers, or even effective implementation of reclamation laws, will, without doubt, be resisted bitterly by corporate America.

Conclusion

Foreign investment in land in the United States gives foreign investors a reason to participate in American politics at the local, state, and federal levels. Such participation may mean that foreign interests become signficant influences in the formation and implementation of public policy. There is, however, no sound way to assess the actual political and economic effects of foreign investment in land because current legislation and land registration systems do not permit systematic identification of the owners of American land, whether citizens or aliens.

This characteristic of the United States land information system may serve the interests not only of foreign investors but also of many large United States business enterprises. Monitoring or regulation of foreign investment in United States land, therefore, raises questions of great concern to powerful political and economic interests in the United States. The United States Chamber of Commerce has consistently supported the increased flow of capital into the United States from foreign sources and maintained that it "should be encouraged by the business community and the government, and kept free of new government controls or restrictive policies, save in exceptional cases where there is a clearly established overriding national interest consideration.18/

The national interest, however, is an extremely vague concept. To the extent that it is identified with the interest of corporate America or multinational America, the interests of the small businessman will be subordinated to that of the large firms and the interest of the family farmer to that of giant agribusiness enterprises. For example, monitoring or regulation of foreign investment in agricultural land might negatively affect American firms with foreign interests, if other nations were to retaliate, while benefiting the family farmer in the United states.

17/ See the statement of David M. Weiman, Legislative Assistant, National Farmers Union before a Joint Hearing of the Senate Small Business Committee and the Senate Interior and Insular Affairs Committee, July 17, 1975 (or available directly from the National Farmers Union).

18/ U. S., Congress, Senate, Committee on Commerce, Foreign Investment in United States, Hearings before a Subcommittee on Foreign Commerce and Tourism on S. 2840. 93d Cong., 2d sess., March 7, 1974, p. 171.

Despite the opposition of the last two national administrations (Nixon, Ford) and important business interests to the further restriction of foreign investment,19/ legislation making possible identification of significant foreign investment in United States land, and particularly agricultural land, would allow systematic study of the effects of such investment on American politics and the economy. Such legislation would not seriously challenge United States' trading partners, most of which already more closely monitor foreign investment than does the United States. In general, registration requirements by themselves would not provoke any serious retaliation.

The special nature of agricultural land, in particular, makes it imperative for policy makers to have access to reliable information about land ownership and land-use patterns if we are to cope successfully with the domestic and international implications of food and fiber shortages in the coming decades. The availability of this information with respect to foreign investors, however, will likely lead to demands for more general disclosure of information which tells us "who owns America." Public availability of this information is a threat to the power and discretion of many large American enterprises. It is therefore probable that these enterprises will oppose national legislation requiring registration of significant foreign investments in American land.

19/ U. S., Department of the Treasury, Summary of Federal Laws Bearing on Foreign Investment in the United States. June 1975, p. iii.

GOALS AND CHARACTERISTICS OF FOREIGN PURCHASERS OF FARMLAND IN THE UNITED STATES

Arnold Paulsen*

The nature of the preferences or "utility functions" surely differs widely from investor to investor. The variation in risk tolerance, preference for land and future expectations must be large within countries among individuals. Nevertheless there probably are relatively more investors preferring specific investments in some countries than in others. Within the same country the common circumstances of national boom or recession property rights uncertainty, recent and prospective rate of inflation and local capital return affect all investors. Nevertheless there is such a large individual variation in value orientation and future expectations within a country that probably only cautious generalizations can be made about the nature of the interest of foreign investors from specific countries.

The Case of West Germany

Germany is the country of residence of several purchasers and inquirers about purchase of U.S. farmland including several in Iowa. The background or general reason for this interest was investigated by several interviews in Germany in July, 1975.

From the Iowa survey we know the purchasers and inquiries from Germany are not by people who want to migrate to the U.S. to earn their living as farmers. The German interest is from people with money who desire farmland as an investment.

The German purchaser of U.S. farmland is probably an individual in the upper five percent of his country's income scale who derives much direct utility from owning farmland. It can safely be presumed he had chosen his farm from among many alternatives. The basis for selection is the preferences of the buyer and his perception of the alternatives. Farmland has high relative value in his mind. The nonresident alien buyer of U.S. farmland has probably chosen U.S. farmland out of a large set of alternatives. Of course, no buyer is ever able to carefully examine all possible alternatives. The cost of information is large especially to a nonresident alien. Nevertheless in 1974 and 1975 with world-wide

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economic recession, excess capacity in Germany, and trade deficits in many countries, made a "buyer's market" in assets. Most German and OPEC individuals and agencies, who are even suspected of having money to invest are showered with offers of goods and property. Foreign investment salesmen and agents have arrived in volume in Germany, Tehran, Riyad and Kuwait. Even in remote and hard-to-get-to places hotels are jammed with salesmen and papers are filled with advertisements. These agents offer a variety of assets and inform the buyer of his alternatives and assist him to maximize his utility function whatever it may be in exchange for a percent of the investment.

Capacity For Foreign Investment

West Germany currency has increased purchasing power internationally. This appreciation increased the attractiveness relatively of foreign investment for Germans. Investment in industry in Germany fell in 1974-75, unemployment rose and factories ran less than full capacity. Exports fell and total demand was less in 1975 than 1974. German capitalists, industrialists, and merchants considered a wide range of foreign investments including foreign ones to avoid cash balances. Foreign investments may have further released investment funds. The possibility, the need for and the capability exists in Germany to purchase foreign assets.

High Value On Farmland

Land, especially food producing land, seems to be held in high esteem by many Germans. Many older Germans remain acutely aware that Germany is deficit in food. There is still a vivid memory of 1944-48 when German people with money could not buy any asset, not even food; but those who had food from their land could trade food for other goods at extremely favorable rates. Farmland in Germany is seldom sold. It is closely held by families even long separated from farming. The rent is only one percent or even only one-half of one percent of the sale price each year. Land is highly valued even if little or no return or appreciation is obtained. Land for pasture and hay, even with less than 20 percent suitable for grain, sells for at least 2 DM per square meter or $3200 per acre. Better farmland with over 40 percent grain, but no urban development potential, may be worth twice as much or $6500 per acre. Farmland zoned for building purposes sells for exceedingly high prices. Raw land zoned for development sells for 40 to 80 DM per square meter ($65,000 to $130,000 per acre) even in nonmetropolitan areas. A plotted building site of 6,000 square feet costs at least $40,000.

German law controls all buying and selling of farmland and prevents the purchase of small unimproved pieces of farmland by nonfarmers. Therefore, speculation in urban fringe is restricted and the sale of building sites is usually by farmers. Building site sales provide capital funds for building improvements and also real demand for farmland by farmers to enlarge their farms. The price of farmland seems not to have changed

significantly in the last eight years. German farmers experienced no price increase in 1973-75 as in the United States. Nevertheless little farmland is offered for sale because those who have it keep it. The return is one percent and the price increase has been nil, but very little farmland is sold. The reason for the holding is probably (a) security of asset value, (b) source of food in emergency, and (c) possible sale as building site at a very favorable price.

German Farmland Expensive To Own

It is possible for nonfarmer Germans to buy entire farms with buildings. It is very difficult (theoretically impossible) for nonfarmers to buy unimproved farmland. If whole farms are bought by nonfarmers rent received is quite likely to be less than the urban buyer must spend each year on buildings, taxes, management and other expenses. Some whole farms are purchased by urban Germans for summer homes and as a consumer good. Some larger farms are bought as "hunting farms" by the very wealthy. The cost and expense is very enormous by U.S. standards. But the land is beautiful, access is usually over an asphalt road and security of value and utility of direct consumption is large.

For those Germans with money and placing a large value on farmland ownership, U.S. farmland has considerable appeal relative to German farmland. U.S. farmland costs one-half to one-fourth as much per unit area. It is available in unimproved pieces and the rent will pay all expenses and yield some return on investment. U.S. farmland is cheap to hold because the rent is typically about five percent of purchase price rather than one-half of one percent. U.S. farmland can be had without buildings and thus held with no additional annual cost! U.S. farmland has increased significantly in value in the last three years while German farmland has remained constant. For those firmly believing in the long-term security of owning farmland, U.S. farmland looks very favorable relative to German farmland. The competitive alternatives to U.S. farmland, such as farmland in other countries -- Somalia, Brazil or Argentina, are not close because of uncertainty of title and property rights. The relative political stability and security of property rights in the United States appeals strongly to German investors. The United States is also a pleasant place for Germans to visit and many have relatives and friends in the area of their land purchases.

The Case of Persia

Persia (or Iran) is not known to be one of the countries currently actively purchasing farmland in the United States. The reasons why they aren't will become obvious. Iran is an oil exporting country with significant positive foreign exchange balance. Port capacity limits import volume and hence Iran is a potential purchaser of U.S. farmland. However, I do not believe there is any significant private or public purchase of U.S. farmland from Iran. I had the opportunity in July, 1975 to ask several knowledgeable Iranians about government and private interest in foreign investments including farmland. Other foreign investments available to Iran seem so far to have been preferred to investments in U.S. farmland.

Potentially foreign investments could be made by either individuals or government agencies in Iran. Both control significant amounts of foreign exchange, which are available to purchase foreign assets. But as far as I could determine these purchases have not included farmland in the United States.

Officials of the Iranian Plan Organization recognize that Iran cannot and should not use all her funds immediately for domestic purposes. For several years the public sector must buy foreign assets and make foreign investments. Foreign asset purchases by Iran are recognized as one means to recycle petro dollars. To buy foreign assets provides oil purchasing countries with an opportunity to earn foreign exchange and buy more oil. Some Iranians view the purchase of real estate in the United States in exchange for oil as "international trade in natural resources." Iran could not physically import and install enough capital consumer goods in 1974-75 to fully use all the oil revenue. Iran's ports are clogged. In the summer of 1975 ships waited in the Persian Gulf up to three months to unload imports. After unloading at the ports the large fleet of Iranian trucks alone was not able to haul the goods from the ports as fast as they could be unloaded. Goods including grain piled up in the open in the desert. Several thousand foreign trucks were employed to transport imported capital and consumer goods overland from Europe and from Persian Gulf ports to cities throughout Iran. The cost and delay of imports argues for deferring some imports until later years.

Iran is deficit in food and will probably remain so for many years. Therefore, one obvious interest of Iran in buying foreign farmland could be not only to store value but to secure food supply. In 1974-75 the United States sold Iran $750 million of agricultural products and is a significant supplier of Iranian food imports. Purchases of agricultural products by Iran from the United States have increased over ten-fold in the last five years.

1974-75 investments in domestic Iranian agricultural development to reduce the food deficit have been large and significant. The current five-year plan was revised in 1974 and Iran tried to spend as much on domestic agricultural development as could effectively be spent. This level of investment, however, could not assure self-sufficiency nor did it exhaust investment resources, especially foreign exchange. Available technicians, managers, entrepreneurs and opportunities were far more limited for Iran than foreign exchange reserves. There were sharply limited marginal returns to any larger levels of investment in domestic agriculture in 1974-75.

Food Supply

Iran can very logically consider foreign investment in agriculture as part of her plan to secure an adequate, secure, future food supply. Direct foreign food production, if it were feasible, would be logical and attractive for Iran and other OPEC countries short of food, worried about world food shortage, and fearful of food export embargos and fearful that food

may be used against them as a political weapon. However, the purchase of farmland in the United States does not appear to Iranians to be an available means to assure a supply of food to Iran from the United States. The agricultural products of the United States are all subject to the same regulation regardless of who owns the land. Therefore, the purchase of farmland in the United States by the Iranian government is not judged to be an effective means of insuring Iran an adequate supply of food at a favorable price. During periods of world scarcity, high food prices, and political tension the Iranian nation might still be vulnerable to a cut-off of supply. Economic ties and political friendship with the United States may be more important to Iran than large quantities of farmland in the United States. Enclave or export plantations are difficult to arrange in the United States. Opportunities for agricultural investment in Sudan and Brazil may be more likely to produce assurance of food production for direct shipment to Iran. The parallel is striking between Iranian ownership of farms and production of food in the United States for export and historical production of oil in Iran by foreign oil companies for export by Britain and the United States. Since direct production for export to Iran does not seem viable to either Iranians or myself, the option seems to warrant no more analysis.

Store of Value

The Iranian government has a need to store funds over time to more effectively use oil revenues. In future years the product of marginal billions of foreign exchange will probably be larger than at the present time. U.S. farmland provides one of the best long-run options for a store of value. U.S. farmland is relatively permanent, limited in supply, likely to be needed more in the future and therefore probably valued as high in the future as now relative to goods. A good hedge against inflation is a great attraction of U.S. farmland. However, U.S. farmland has several disadvantages to Iranian and other OPEC countries relative to other means as a store of value. (1) The average rate of increase in value of U.S. farmland before 1972 was only two or three percent per year and thus historically farmland is not increasing in value as fast as urban buildings, stocks of manufacturing corporations, shipping companies, airlines, and so on. (2) The cost or trouble of investing several $100 million in U.S. farmland is great relative to the cost of investing a like amount of money in other assets such as government loans, corporation shares or large urban building complexes. The number of people competent and trusted to make significant foreign farmland investments for the government is very limited in Iran.

Individual Asset Security

Some Iranians with significant private wealth have bought land and property in foreign countries. However, I did not hear of any purchases or interest in U.S. farmland. Purchase of foreign land by Iranians may be partly out of fear of expropriation. Since 1962 there has been some nationalization of privately held land and water rights in Iran. However, it is not likely

in my opinion that urban property in Iran or the remaining medium sized rural properties will be nationalized and redistributed. Nevertheless there is some chance of expropriation; therefore diversification of asset holdings to include foreign property is a desirable hedge to some individuals. Foreign investment obviously reduces the chance of losing all one's assets in the remote chance of nationalization.

Homes and family life are valued very highly in Iran, probably higher relatively than in the United States. Americans usually try to keep total monthly costs of housing below 20 percent of take-home pay and the value of a home below three times annual income, before taxes. On the other hand, young Iranians of middle income may spend one-third of their monthly incomes on housing. Older Iranians, after land appreciation, frequently have a house and garden with a current market value of 20 times annual income. Perhaps the twin factors of high value on homes and high current appreciated property value combine to explain purchases of homes in Spain, Switzerland, Italy and France for summer use. Weather in those areas is more attractive in the summer especially on the seashore and in the mountains than in Iran where it is very hot. The opportunity for diversification even of a significant consumption investment like housing may lead to foreign investment. Such private foreign investment probably will not affect the market for U.S. farmland.

Land Speculation For Profit

I could find no time series survey of land prices in Iran to indicate the rate of land price increase. But apparently the price of urban land and houses in the cities has risen very rapidly. Some individual Iranians cited examples of specific property values rising as much as three times or tripling in value during the year 1974. Others state that in their opinion the average property value in Tehran rose "only" 50 percent in 1974. A poultry farm advisor said that land that several of his advisees had purchased in 1960 near Tehran rose from 70 to 10,000 rials per square meter. This great increase of 150 times in land value in 15 years meant that the land of a 25 acre poultry farm rose in value from $100,000 to $15 million. This capital gain was many times the income of the poultry business in 15 years. Even if the story is a rare one or somewhat exaggerated the money made on paper and sometimes in reality on land in Iran has been phenomenal.

In 1975, I was told the rate of increase in land value in Iran had leveled off. Buying and selling land for speculation has been made more difficult by a regulation that requires land "be improved" before it is resold. Perhaps some Iranian land speculators with money will desire to find a new place to speculate. However, it seems unlikely that U.S. farmland would attract their attention relative to urban fringe land, where the chance of large gain is greater and quicker (see enclosed advertisement from an Iranian newspaper for land in California near a proposed new airport). U.S. farmland may attract some pure speculators because of the rapid price rise after 1972. If speculators believe food supplies worldwide will stay

short and prices high then they may also believe U.S. farmland could again double in value. Pessimistic world food outlook and profitable U.S. farm operations attract nonfarm investors including foreign speculators.

Operation For Profit

It was suggested to me that some Iranian capitalists with successful farm operations in Iran might venture to operate agricultural land in other countries if profit seemed good. The concept is solid but the prospect seems to me unlikely. The large Iranian farm operations are very profitable as a sideline for Iranian businessmen. Capitalists in Iran who have good connections usually obtain high rates of return on all investments, probably over 30 percent per year. Large scale agriculture in Iran is profitable because it receives (a) higher product prices, (b) lower input prices, and (c) more sophisticated technology with higher physical productivity than small farms. The rate of profit may be increased through vertical integration, that is feed milling or custom animal slaughter to obtain inputs or sell outputs at wholesale prices. Large scale agriculture is profitable in Iran and less competitive than in the United States. It seems that only an occasional Iranian capitalist fearing loss of his domestic connections and protected market would seek to diversify into foreign agricultural operations.

Summary With Respect To Iran And Possibly Other OPEC Countries

The capacity and potential of official investment is considerable. The most probable goals are to secure food supply and store value over time. However, there is a low probability of official purchase of U.S. farmland. Purchase of U.S. farmland would not insure food supply and the cost of acquisition and disposal is too large.

Private investors from Iran and other OPEC countries might purchase U.S. real estate as (1) a means of wealth security through diversification, or (2) a speculation. However, they probably will not buy farmland because the rate of return and appreciation is too low and the rural environment is not attractive to them.

The Italian Or Latin American Case

These countries are viewed by their own wealthy residents to be politically unstable. By tradition, despite economic progress, the wealth is unevenly distributed and the small upper class feel vulnerable to revolution, nationalization of land, property and assets. The rich are especially uncertain about what to do with their cash balances. Certainly earnings and net revenues from agricultural land or industrial production in their home country are their source of income for consumption and investment. But with vulnerability and instability of the political system the future is risky. To keep all wealth and all their sources of income at home may maximize their income but also maximizes their vulnerability to confiscation in the long-run.

Italian inflation is the highest in Europe and in Chile and Brazil in South America it is or has run in triple digits! Under high inflation rates money and bank deposits evaporate quickly. In such inflation those with a large cash flow become desperate and reckless to buy something. They abhor or are strongly discouraged from holding even short-term time deposits in the home country.

The United States' reputation for secure property rights and relative currency stability, compared to Italy and South America, will cause some nonresident aliens to invest part of their earnings in North America. For wealthy families it is also possible and prudent to have some children born in the United States so they are natural born Americans.

The following motivations are important considerations in the purchase of U.S. farmland. (1) To diversity holdings and have some outside the country to fall back on in case the more lucrative investments in home agriculture or industry are nationalized. (2) To hedge against inflation anything that floats at least moderately upward with prices is preferable to local currency. Land in the United States is preferable to cash balances in Swiss Banks on this count but perhaps less effective than oil reserves. (3) The United States has few restrictions and relatively low taxation rates on nonresident alien purchasers of farmland. Most developed countries have complicated land purchase control agencies. (4) U.S. farmland gives a return - a legitimate source of income which is inside the U.S. and therefore not blocked or suspicious. (5) Long-term food balance is expected by many wealthy to get worse and thus they expect U.S. farmland to appreciate. (6) The political and economic ideology of the United States, both by the majority of the people and by the laws and policies of the government, is viewed by the wealthy as one of the most solidly capitalistic in the world. The long-term policy of private property and acceptability of profitability is one of the most favorable in the world in the opinion of many Italian and Latin American people of wealth.

Although assets cannot be sold and capital exported, it is possible with comparative ease to take cash flow out of these countries without penalty. The wealthy usually have political connections or the opportunity and ability for corruption. A large part of the upper class trade internationally and can retain part of the payments received outside the country for investment overseas.

Many made their wealth through agriculture and are acquainted with management of large land holdings. Many enjoy owning and partially directing farm operations and thus may favor U.S. farmland purchases even if the financial return is less than urban or industrial assets.

In summary, the upper class of Italy and Latin American countries are not attracted to American farmland for the high return. They usually have far better rates of return in their own business in their own home country. They are buying insurance against loss from nationalization and inflation. U.S. farmland is seen as a low management, low risk investment with good long-term appreciation and security prospects.

BIDDING POTENTIAL OF FOREIGN AND DOMESTIC INVESTORS IN U.S. FARMLAND

Duane G. Harris and William F. Hampel, Jr.*

In the absence of severe statutory restrictions, the future ownership of United States farmland will be vested in those individuals or corporations with the greatest bidding potential for agricultural land. A potential bidder for farmland may be classed into one of three investor groups: domestic farm operator, domestic non-farm investor, and non-resident alien investor. Individuals in each group have particular characteristics--motives, capabilities, and expectations--which determine bidding potential. Thus the purpose of this chapter is to develop a framework within which to evaluate the relative bidding potential of these various investor groups.

To explore the impact on bidding potential of some of the important variables associated with land and the desire to own land, a theoretical model will be constructed to determine the maximum bid price that would be made for an acre of land by a decision maker with a given set of characteristics. The following variables of the model are associated with those investor characteristics: (1) before-tax net income per acre, (2) variability of income per acre, (3) investor's expectations as to the rate of growth of land income and prices, (4) investor's initial wealth position, (5) variability of the value of initial wealth, (6) diversification of investor's portfolio with respect to land, (7) investor's degree of risk aversion, (8) investor's required rate of return on investment, and (9) investor's marginal income tax rate. The construction of such a model provides the basis for further empirical investigation of the relative bidding potential of the various categories of bidders.

In the next section, the formal theoretical model of bidding potential is developed. Then the influence of various investor characteristics on bidding potential is examined. Finally, a discussion of the use of the model is offered.

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Theoretical Model

A theoretical model of bidding potential is provided by Harris and Nehring, 1/ whose formulation has as its genesis the work of Pratt. In his formulation of a measure of the degree of risk aversion, Pratt defines the bid price as the largest amount a decision maker would willingly pay to obtain a risky asset. 2/ This bid price is given by the equation

$$(1) \quad u(x) = E[u(x + \tilde{z} - B)] \quad 3/$$

where x represents the level of assets held by the decision maker; u, his utility function; E, the expected value operator; $\tilde{z}$, the risky asset; and B, the bid price. 4/ Equation (1) establishes the behavioral assumption that the decision maker will pay a price for a risky asset such that the expected utility of his resulting wealth position is no less than the utility of his original wealth position which did not include the risky asset.

In the Harris and Nehring analysis, x is interpreted as the level of certain net worth of the decision maker and $\tilde{z}$ as a random variable denoting the value of an acre of land. Thus the bid price B is the maximum amount, consistent with the utility level associated with his original wealth position, that the investor would be willing to pay for an acre of land. From (1) Harris and Nehring derive a model capable of analyzing the impacts (on bid price) of several important variables in the land acquisition process.

Whereas the Harris and Nehring model provides the basis for analyzing the relative bidding potential of existing domestic farm size classes, it is not fully applicable to the issue of foreign versus domestic future land ownership. Their analysis examines the bidding potential of domestic farm operators, while the present chapter seeks to provide a means of comparing the relative bidding potential of a wider range of investors. Since not all investors are farm operators, the diversification of the investor's portfolio with respect to land would likely make an important contribution to bid price determination.

In order to extend the model to include diversification, a random element must be introduced into the initial wealth position. Let

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1/ Duane G. Harris and Richard F. Nehring, "Impact of Farm Size on the Bidding Potential for Agricultural Land," Amer. J. Agr. Econ, 58 (May, 1976), pp. 161-169.

2/ John W. Pratt, "Risk Aversion in the Small and in the Large," Econometrica, 32 (Jan.-Apr., 1964), p. 124.

3/ Variables that appear with a tilde are intended to represent random variables, i.e., those whose future values are not known with certainty.

4/ The variable B is equivalent to π_b in Pratt's notation.

$$(2)\quad \tilde{V} = x + \tilde{v}$$

where x is now the beginning-of-period net worth of the decision maker and $\tilde{v}$ is the random dollar change in this beginning-of-period net worth position over the period. Thus $\tilde{V}$ is the random value of beginning wealth as measured at the end of the period. Assuming that

$$(3)\quad E(\tilde{v}) = 0$$

and defining

$$(4)\quad \mathrm{Var}(\tilde{v}) = \sigma^2_{\tilde{v}}$$

then

$$(5)\quad E(\tilde{V}) = x$$

$$(6)\quad \sigma^2_{\tilde{V}} = \sigma^2_{\tilde{v}}$$

where $E(\tilde{V})$ and $\sigma^2_{\tilde{V}}$ are, respectively, the expected value and variance of the investor's initial wealth position at the end of the period. That is, the investor expects that, on average, the end of period value of his beginning net worth will be equal to its beginning value. Under these modified conditions, the bid price for an acre of land is given by the equation

$$(7)\quad E[u(x + \tilde{v})] = E[u(x + \tilde{v} + \tilde{z} - B)]$$

The interpretation of this equation is analagous to that of equation (1). The assumption is made that the investor does not alter his existing portfolio other than to purchase the asset $\tilde{z}$.

By using a Taylor series to expand u around x, 5/ an approximation for the bid price can be derived from the quadratic equation

$$(8)\quad \tfrac{1}{2}u''(x)B^2 - [u'(x) + E(\tilde{z})u''(x)]B$$

$$+\left\{\tfrac{1}{2}u''(x)\left[\sigma^2_{\tilde{z}} + 2\rho\,\sigma_{\tilde{v}}\sigma_{\tilde{z}}\right] + E(z)u'(x)\right.$$

$$\left. + \tfrac{1}{2}[E(\tilde{z})]^2u''(x)\right\} = 0$$

where u'(x) and u''(x) are the first and second derivatives of the utility function; $E(\tilde{z})$ and $\sigma^2_{\tilde{z}}$ are, respectively, the expected value and

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5/ Taro Yamane, Mathematics for Economists, 2nd ed.; (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1968), pp. 280-281.

variance of the value of an acre of land; and ρ, the correlation coefficient between the value of land and the value of the investor's initial portfolio.

By utilizing Pratt's measure of local risk aversion 6/

$$(9) \quad r(x) = -\frac{u''(x)}{u'(x)}$$

equation (8) may be rewritten as

$$(10) \quad \tfrac{1}{2}r(x)B^2 - [E(\tilde{z})r(x) - 1]\,B + \left[\tfrac{1}{2}r(x)\left\{\left[\sigma_{\tilde{z}}^2 + 2\rho\sigma_{\tilde{v}}\sigma_{\tilde{z}}\right] + \left[E(z)\right]^2\right\} - E(\tilde{z})\right] = 0$$

Solution of this quadratic equation gives B in terms of r(x), $E(\tilde{z})$, $\sigma_{\tilde{z}}$, $\sigma_{\tilde{v}}$, and ρ:

$$(11) \quad B = E(\tilde{z}) - \frac{1}{r(x)} \pm \left\{\frac{1}{[r(x)]^2} - (\sigma_{\tilde{z}}^2 + 2\rho\sigma_{\tilde{v}}\sigma_{\tilde{z}})\right\}^{\frac{1}{2}}$$

for $r(x) \neq 0$

$$(11') \quad B = E(\tilde{z}) \text{ for } r(x) = 0$$

If, however, $\tilde{z}$ is defined as the discounted value of future income from an acre of land and is derived from a standard perpetuity model incorporating a constant rate of growth, 7/ the value of an acre of land may be defined as

$$(12) \quad \tilde{z} = \tilde{y}\,\frac{(1 - t)}{(i - g)}$$

where $\tilde{y}$ represents a random before-tax income stream from land, t is the marginal income tax rate of the decision maker, g is the expected rate of growth of after-tax income, and i is the decision maker's discount rate for pure time preference. Then $E(\tilde{z})$ and $\sigma_{\tilde{z}}^2$, respectively, become

$$(13) \quad E(\tilde{z}) = \frac{(1 - t)}{(i - g)}\,E(\tilde{y})$$

$$(14) \quad \sigma_{\tilde{z}}^2 = \left[\frac{(1 - t)}{(i - g)}\right]^2 \sigma_{\tilde{y}}^2$$

Substituting (13) and (14) into (11) and (11') gives

6/ Pratt, p. 125.

7/ See, for example, James C. Van Horne, Financial Management and Policy, 3rd ed.; (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1974), pp. 21-22.

$$(15)\quad B = \frac{(1-t)}{(i-g)}E(\tilde{y}) - \frac{1}{r(x)} \pm \left\{\frac{1}{[r(x)]^2} - \left[\left(\frac{(1-t)}{(i-g)}\right)^2 \sigma^2_{\tilde{y}} + 2\rho\sigma_{\tilde{v}}\sigma_{\tilde{y}}\frac{(1-t)}{(i-g)}\right]\right\}^{\frac{1}{2}}$$

for $r(x) \neq 0$ 8/

$$(15')\quad B = \frac{(1-t)}{(i-g)}E(\tilde{y}) \qquad \text{for } r(x) = 0.$$

Now, the maximum bid price B is defined in terms of the preferences of the decision maker (through the measure of the degree of risk aversion, r(x)); the expected value and variance of land income, $E(\tilde{y})$ and $\sigma^2_{\tilde{y}}$; the expected rate of growth of land income, g; the marginal income tax rate of the investor, t; the decision maker's rate of pure time preference, i; the level and variability of net worth of the investor, x and $\sigma^2_{\tilde{v}}$; and the correlation coefficient between the value of land and the value of the investor's initial portfolio, ρ. Specification of the values of these variables allows the calculation of the bid price for any potential purchaser of farmland.

Decision-Maker Characteristics and the Maximum Bid Price

The actual values of the variables in the bid price equation (15) are related to the land itself and the characteristics, capabilities, and expectations of the specific decision maker in question. A qualitative evaluation of the influence of these variables on the maximum bid price for an acre of land can be carried out by taking the partical derivatives of B with respect to $E(\tilde{y})$, r(x), x, $\sigma_{\tilde{y}}$, $\sigma_{\tilde{v}}$, ρ, t, i, and g. Thus,

$$(16)\quad \frac{\partial B}{\partial E(\tilde{y})} = \frac{(1-t)}{(i-g)} > 0$$

$$(17)\quad \frac{\partial B}{\partial r(x)} = \frac{1}{[r(x)]^2}\left[1 - \frac{1}{D^{\frac{1}{2}}r(x)}\right] < 0$$

where $D = \left\{\frac{1}{[r(x)]^2} - \left[\left(\frac{(1-t)}{(i-g)}\right)^2 \sigma^2_{\tilde{y}} + 2\rho\sigma_{\tilde{v}}\sigma_{\tilde{y}}\frac{(1-t)}{(i-g)}\right]\right\} > 0$ 9/

$$(18)\quad \frac{\partial B}{\partial x} = \frac{r'(x)}{[r(x)]^2}\left[1 - \frac{1}{D^{\frac{1}{2}}r(x)}\right] \gtrless 0.$$

8/ Since the bid price is defined as the largest amount a decision maker would willingly pay for a risky asset, the solution value for B in (11) and (15) requires selection of the positive square root.

9/ Requiring the solution of B to be real causes (a) the sign of D to be positive and (b) the sign of $\partial B/\partial r(x)$ in (17) to be negative.

the sign of $\partial B/\partial x$ depends on whether the decision maker exhibits an increasing, unchanged, or decreasing degree of risk aversion over wealth, as determined by the sign of $r'(x)$.

$$(19)\quad \frac{\partial B}{\partial \sigma_{\tilde{y}}} = -\frac{1}{D^{\frac{1}{2}}}\,\frac{(1-t)}{(i-g)}\left[\frac{(1-t)}{(i-g)}\,\sigma_{\tilde{y}} + \rho\sigma_{\tilde{v}}\right] < 0$$

$$(20)\quad \frac{\partial B}{\partial \sigma_{\tilde{v}}} = -\frac{1}{D^{\frac{1}{2}}}\left[\rho\sigma_{\tilde{y}}\,\frac{(1-t)}{(i-g)}\right] < 0 \quad \underline{10}/$$

$$(21)\quad \frac{\partial B}{\partial \rho} = -\frac{1}{D^{\frac{1}{2}}}\left[\sigma_{\tilde{v}}\,\sigma_{\tilde{y}}\,\frac{(1-t)}{(i-g)}\right] < 0$$

$$(22)\quad \frac{\partial B}{\partial t} = \frac{-1}{(i-g)}\left\{E(\tilde{y}) - \frac{1}{D^{\frac{1}{2}}}\left[\frac{(1-t)}{(i-g)}\,\sigma^2_{\tilde{y}} + \rho\sigma_{\tilde{v}}\,\sigma_{\tilde{y}}\right]\right\} \gtrless 0$$

The sign of $\partial B/\partial t$ is ambiguous because a change in the marginal tax rate influences the bid price in two ways. An increase in the marginal tax rate will (a) decrease the bid price through a reduction in expected after-tax income after an acre of land, but (b) increase the bid price through a reduction in the variability of after-tax income from both land and capital gains or losses on the original portfolio.

$$(23)\quad \frac{\partial B}{\partial i} = -\frac{(1-t)}{(i-g)^2}\left\{E(\tilde{y}) - \frac{1}{D^{\frac{1}{2}}}\left[\frac{(1-t)}{(i-g)}\,\sigma^2_{\tilde{y}} + \rho\sigma_{\tilde{v}}\,\sigma_{\tilde{y}}\right]\right\} \gtrless 0$$

$$(24)\quad \frac{\partial B}{\partial g} = \frac{(1-t)}{(i-g)^2}\left\{E(\tilde{y}) - \frac{1}{D^{\frac{1}{2}}}\left[\frac{(1-t)}{(i-g)}\,\sigma^2_{\tilde{y}} + \rho\sigma_{\tilde{v}}\,\sigma_{\tilde{y}}\right]\right\} \gtrless 0$$

The signs of $\partial B/\partial i$ and $\partial B/\partial g$ are likewise ambiguous without knowledge of the variables in the model. The effect of i and g on the bid price, however, will be of equal magnitude but opposite in sign.

Interpretation of equations (16) - (24) leads to the following ceteris paribus qualitative results:

(a) An increase in expected before-tax land income resulting from economies of scale in production and marketing, more efficient management, specialization, or conglomeration will result in a higher bid price per acre.

10/ The typical assumption of $\rho \geq 0$ establishes the signs of $\partial B/\partial \sigma_{\tilde{y}}$ and $\partial B/\partial \sigma_{\tilde{v}}$ to be negative. More generally, the signs of $\partial B/\partial \sigma_{\tilde{y}}$ and $\partial B/\partial \sigma_{\tilde{v}}$ may be ambiguous if ρ is negative.

(b) An increase in the degree of risk aversion resulting from changes in the parameters of the utility function will lead to a reduction in the maximum bid price.
(c) An increase in the initial wealth position will result in a higher, unchanged, or lower maximum bid price according to whether the investor exhibits decreasing ($r'(x) < 0$), constant ($r'(x) = 0$), or increasing ($r'(x) > 0$) risk aversion over wealth.11/
(d) An increase in the variability of before-tax land income resulting from greater degrees of financial or operating leverage or from additional exogenous uncertainty will, under a reasonable assumption about the correlation coefficient, lead to a lower bid price.
(e) An increase in the variability of initial portfolio value will, under a reasonable assumption about the correlation coefficient, cause a reduction in the maximum bid price.
(f) An increase in the correlation between land income and initial portfolio value will lead to a reduction in the maximum bid price.
(g) An increase in the marginal income tax rate will, under reasonable assumptions about the sizes of the variables in the model, lead to a reduction in the maximum bid price.
(h) An increase in the decision maker's rate of pure time preference will, under reasonable assumptions about the sizes of the variables in the model, lead to a reduction in the maximum bid price.
(i) An increase in the investor's expectations with respect to the rate of growth of after-tax land income will, under reasonable assumptions about the sizes of the variables in the model, lead to an increase in the maximum bid price.

These conditions may also be interpreted in the specific context of the potential future ownership of farmland. If it can be assumed that prospective buyers in the land market are decreasingly risk averse over wealth, land will be acquired by those bidders with (a) the highest expected before-tax income per acre, (b) the lowest degree of risk aversion, (c) the largest initial wealth position, (d) the lowest variability of before-tax land income, (e) the lowest variability of initial portfolio value, (f) the lowest correlation between land income and initial portfolio value, (g) the lowest marginal income tax rate, (h) the lowest rate of pure time preference, and (i) the highest expected rate of growth of after-tax land income.

11/ A problem arises in that the model does not take account of the lumpiness of the land trading process, i.e., B is defined as the bid price per acre of land whereas land is traded in larger blocks. This problem may be avoided if, in the empirical specification of the model, only effective potential bidders are considered. An effective bidder is one with sufficient financial resources to purchase the relevant block of land if his per-acre bid is accepted.

Use of the Model for Analysis

Whereas a reliable comparison of the bidding potentials of various groups of investors would require the numerical specification of the variables in equation (15), some *a priori* and rather tentative conclusions can be derived from the model. This preliminary analysis will be restricted to a consideration of two of the classes of potential land purchasers--domestic farm operators and non-resident alien investors. Various possible sources of bidding advantage for each of the classes will be investigated, and a brief survey of policy instruments suggested by the model will be included.

Probable Sources of Domestic Farm Operator Bidding Advantage

The single most important bidding advantage that domestic farm operators are likely to enjoy is that of a greater expected before-tax income per acre. This advantage is based on the premise that domestic farm operators are in a better position than their foreign competitors to achieve the economies of size associated with add-on land purchases or large scale operations. In the first instance, non-resident alien investment activity in United States farmland is a fairly new phenomenon.12/ This suggests that non-resident aliens are unlikely to be in a position to make add-on purchases. Secondly, several states with prime agricultural land (e.g., Minnesota, Iowa, Pennsylvania, and Wisconsin) restrict the acreage that a non-resident alien may own. In addition, a few states prohibit non-resident alien land ownership.13/ These restrictions would seem to limit the potential for large scale initial purchases by non-resident aliens. However, it must be recognized that various devices which conceal ownership and hence circumvent these restrictions are available to non-resident alien investors desiring to purchase large blocks of land.14/

A second source of domestic bidding advantage might result from the taxation of land income. If a non-resident alien intends to remain non-resident, and if the income he derives from the operation of U. S. farmland is to be repatriated, that income is potentially subject to taxation by both United States and home-country governments. Such dual taxation would of course be limited to those non-resident aliens whose

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12/ Craig Currie, Michael Boehlje, Neil Harl, and Duane Harris, "NonResident Alien Activity in Iowa Farmland: A Preliminary Analysis," *Interim Report to Congress, Foreign Direct Investment in the United States*, Volume II, U. S. Department of Commerce, (Washington: Government Printing Office, 1975), pp. XII, 18-19.

13/ Fred L. Morrison, "Legal Regulation of Alien Land Ownership in the United States," *Interim Report to Congress, Foreign Direct Investment in the United States*, Volume II, U. S. Department of Commerce, (Washington: Government Printing Office, 1975), pp. XI, 55-65.

14/ Currie, *et. al.*, p. XII, 15.

governments do not grant foreign tax credits. If, on the other hand, land income is not repatriated in an attempt to avoid home-country taxation, the resultant restrictions on the use of that income by non-resident aliens may be interpreted as a reduction in net income per acre.

Further, international exchange rate movements may be a source of domestic farm-operator bidding advantage. However, this affect will not be as direct or obvious as is sometimes thought. In the absence of risk aversion (equation 15'), and under a proportional tax on land income, an increase in the value of the dollar relative to foreign currencies will not serve to reduce foreign bids. In this case, two conflicting effects of a foreign currency devaluation will exactly offset each other. Firstly, the reduction in the value of the foreign currency will tend to reduce the dollar bid in proportion to the devaluation. Secondly, however, the increased value of the dollar will increase the home-country value of repatriated land income, and hence also the bid, in the same proportion.

Any effect of exchange rate movements on the relative bidding potential must therefore derive from the risk-aversion term in equation 15. Notably, an increase in the value of the dollar will reduce the net worth positions of non-resident aliens relative to domestic farm operators. Under the normal assumption of decreasing risk aversion over wealth, this will serve to reduce the foreign bid price. Further, such a foreign currency devaluation may have the effect of rendering some previously "effective" non-resident alien investors "ineffective." Finally, investor expectations with respect to future exchange rate movements may influence foreign versus domestic bidding potentials. If non-resident aliens expect that the international value of the dollar will fall, the expected reduction in home-country valuation of land income will reduce the current foreign bid.

A final source of domestic bidding advantage stems from the greater information costs to be borne by foreign investors. The bid price determined in the model is gross of all information and transaction costs. It is to be expected that when these costs are subtracted to arrive at an actual bid, non-resident alien bids will have been reduced by more than domestic farm-operator bids.

Probable Sources of Non-Resident Alien Bidding Advantage

The salient source of bidding advantage for non-resident aliens would appear to stem from the diversification of their beginning portfolios with respect to United States farmland. Since, as has been noted previously, foreign activity in the United States land market is a fairly new phenomenon, it is plausible to expect that the correlation between the value of land and the value of initial portfolios will be lower for non-resident alien investors than for domestic farm operators whose assets are comprised chiefly of land and farm-related equipment. Hence, the marginal riskiness of an acre of land will be lower to the

non-resident alien investor than to the domestic farm operator, resulting in a higher foreign bid on this account.

Another factor which might generate a greater bidding potential for non-resident aliens as opposed to domestic farm operators is not actually a difference in the degree of risk aversion per se, but rather a difference in investor's perceptions as to the relative riskiness of alternative assets. Preliminary surveys indicate that there exists some concern on the part of West-European investors as to the possibility of unfavorable political developments in Europe, both internal and external.15/ These political expectations, while not affecting the absolute riskiness of United States investments, would render them relatively more attractive to the foreign investor. This factor could be incorporated into the empirical analysis of the model as either (a) a lower required rate of return on investment by non-resident aliens on their United States investments than on their home-country assets, or (b) a lower degree of risk aversion by aliens with respect to the purchase of United States assets as compared to their degree of risk aversion in general.

Finally, future movements of international exchange rates could provide a bidding advantage for non-resident aliens. By reasoning similar to that which accompanied the previous discussion of exchange rates, an increase in the value of foreign currencies relative to the dollar would increase foreign bids through the impact on initial net worth positions. Also, expectations on the part of non-resident alien investors of a future increase in the value of the dollar would tend to increase foreign bids.

Policy Instruments Incorporated in the Model

If upon specification of the model it became apparent that aliens had an inherent bidding advantage, and if the intent of U. S. policymakers were to thwart that foreign investment in domestic farmland, various policy instruments could be analyzed in the context of the model. With the specification of values for variables in the model, policy parameters could be adjusted to evaluate their impact on foreign versus domestic bid prices.

For example, one potential policy prescription would be to tax the income earned on land by foreigners at a higher rate than the same income earned by domestic operators. This could be analyzed in the

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15/ See, for example, Business Week, November 3, 1975, p. 40; also, Currie, et. al.; and Arnold A. Paulsen, "The Nature of Interest of Foreign Purchasers of Farmland in the United States," unpublished manuscript, (Ames: Iowa State University, 1975).

model by specifying different marginal income tax rates for the two investor groups. Another policy might call for differential property tax rates for the two groups. Higher property-tax rates for alien investors would be incorporated in the model through reductions in net income before income taxes. Finally, policies incorporating acreage restrictions on foreign investment would preclude alien investors from achieving economies of size available to domestic farm investors. This effect would also work through a reduction in net income before taxes.

Thus, if necessary, various policies could be incorporated to determine those combinations that could be used to achieve bidding equality between alien and domestic investors or to achieve absolute bidding advantages for domestic farm operators. As such, the model could evaluate the feasibility of restricting foreign investment through the operation of the market mechanism.

Summary

This paper develops a theoretical framework within which to analyze the potential for foreign control of U. S. farmland. It is assumed that, in the absense of statutory restrictions, such control will be vested in those domestic or foreign investors with the greatest bidding potential for land. Bidding potential is, in turn, determined by the particular attributes--characteristics, capabilities, and expectations--of investing individuals or corporations.

The theoretical model determines the maximum bid price that would be made by a decision maker with a given set of characteristics, capabilities and expectations. As such, the model is capable of incorporating many of the arguments that are typically included in discussions of foreign versus domestic control of farmland.

While the theoretical model provides no direct answers without specification of the values of the variables, it does outline the scope and form of the necessary data base to evaluate the ownership question. Also, it allows the analysis of various policy prescriptions which might be utilized to control foreign ownership of domestic farmland. Hopefully, the model can provide valuable guidelines and insights to researchers pursuing the issue of foreign investment in U. S. agricultural land.

FOREIGN INVESTMENT IN IOWA FARMLAND

Craig Currie, Michael Boehlje
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Introduction

The issue of non-resident alien investment in U.S. business and agriculture has recently attracted the attention of numerous groups at the local, state, and national level. Public discussion and concern regarding this issue are based largely on hearsay evidence and incomplete information. There is no comprehensive source of data or general picture of foreign investment in U.S. agriculture. Not only are the number of cases and characteristics (type of land, motivations of the investor, the intermediary channels etc.) of actual investment activity unknown, but the nature and incidence of inquiries are equally unclear.

This paper attempts to document the characteristics of recent transactions and inquiries by non-resident aliens in the Iowa rural real estate market. First a review of the issues and interest in non-resident alien investment in farmland is provided. The subsequent section discusses the methodology for collecting the data. The results of the study are then summarized, with particular emphasis on the characteristics of the real estate involved in foreign investment activity, the nature of the investor, and intermediary channels, the negotiation process, financing arrangements, the farm operation arrangements and the reaction of local residents. The final section presents conclusions and recommendations for further research.

Foreign Investment in Agriculture

Within the last year or so there has been increasing awareness and concern regarding the acquisition of U.S. and Iowa real estate, especially farmland, by non-resident aliens. This investment activity is believed by some to represent large flows of foreign capital into the agricultural sector and to be part of a significant increase in foreign investment of all kinds throughout the United States.

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Krause and Scofield[1] suggest several incentives for foreign investment in the U.S. agricultural sector: assuring a supply of U.S. food for foreign consumption; learning American techniques of food production and marketing; obtaining the U.S. rates of return on investment which, in the agricultural sector, often exceed those of other countries; profiting on the capital appreciation of U.S. land, which has increased in value at a spectacular rate in recent years; and obtaining a stability of investment to protect wealth from inflation or other loss. The devaluation of the U.S. dollar relative to other national currencies--thus making U.S. land relatively less costly than foreign real estate; the accumulation of large excess foreign exchange holdings by some countries in western Europe, by Japan, and by the oil exporting nations; and the growing world concern with food shortages, are all additional factors cited as possible reasons for increased foreign interest in U.S. investment in general, and in the agricultural sector in particular.

To focus public attention on this issue, congressional hearings on foreign investment activity in the United States were held in January and February, 1974 by the U.S. House Committee on Foreign Affairs, Subcommittee on Foreign Economic Policy, chaired by Representative John Culver[2]. The Senate Committee on Commerce, Subcommittee on Foreign Commerce and Tourism, chaired by Senator Daniel Inouye also held hearings on the subject in March and September of 1974[3]. Various reports prepared by the Economic Research Service (ERS), U.S. Department of Agriculture, have developed the need for and methods of obtaining data and analyzing foreign investment in agriculture and the food system[4]. ERS has also prepared a report on the state and federal regulation of alien and land ownership[5].

In Iowa, the State Legislature recently passed a provision requiring foreign interests owning farmland to report their holdings[6].

1/ Krause, Kenneth R. and William H. Scofield, "Foreign Investment in Agriculture and the Food System: The Need for and Methods of Obtaining Data and Analysis," ERS, NEAD, U.S. Department of Agriculture. Prepared for Hearings before the Subcommittee on Foreign Commerce and Tourism, Senate Committee on Commerce, March 7, 1974.

2/ U.S. House Committee on Foreign Affairs, Subcommittee on Foreign Economic Policy, Hearings, January 29, 1974, and February 5, and 21, 1974.

3/ U.S. Senate Committee on Commerce, Subcommittee on Foreign Commerce and Tourism, Hearings, March 1974, and September, 1974.

4/ Krause, Kenneth R. and William H. Scofield, "Foreign Investment in Agriculture and the Food System: The Need for and Methods of Obtaining Data and Analysis," ERS, NEAD, U.S. Department of Agriculture. Prepared for Hearings before the Subcommittee on Foreign Commerce and Tourism, Senate Committee on Commerce, March 7, 1974.

5/ Morrison, Fred L. and Kenneth R. Krause, "State and Federal Legal Regulation of Alien and Corporate Land Ownership and Farm Operation;" Agricultural Economic Report No. 284, ERS, U.S. Department of Agriculture, 1975.

6/ House File 215; Iowa General Assembly, 1975.

Several newspapers in Iowa have printed numerous reports of land sales and inquiries about land involving aliens in many parts of the state[1/]. Individual Iowans express concern for the loss of local control in their communities, the possible rise of a feudal-like system of non-responsive absentee landlords, substantial increases in the cost of land, and increased rents paid by tenant operators if large tracts of land become controlled by non-resident aliens.

Iowa presently has a law (Iowa Code, Chapter 567), dating from the nineteenth century and last amended in 1965, that prohibits non-resident aliens from owning more than 640 acres of land outside cities and towns. However, a number of techniques have been suggested to circumvent this limitation and allow a foreign interest to acquire control of more than 640 acres. It has been argued that an individual can organize separate corporations or partnerships in which he or she can participate as an investor. Each such firm apparently could be used as an investment vehicle and acquire 640 acres of farmland. Alternatively, devices are available to conceal the identity of the actual owners of the land. These include the use of "dummy names", by which a fictitious person is listed as the owner of record; "straw person" arrangements, using limited partnerships or other legal instruments; corporations, in which a foreign investor owns controlling interest in a domestic corporation whose recorded officers and directors are all U.S. citizens and whose stockholders are not legally required to be publicly listed; and ownership by trust, where only the trustee is made a matter of record. Also, ownership could be concealed by not publicly recording the title transfer of the land. Of course, failure to record a transfer could subject the purchaser to possible claims by subsequent good faith purchasers from the seller or the seller's creditors.

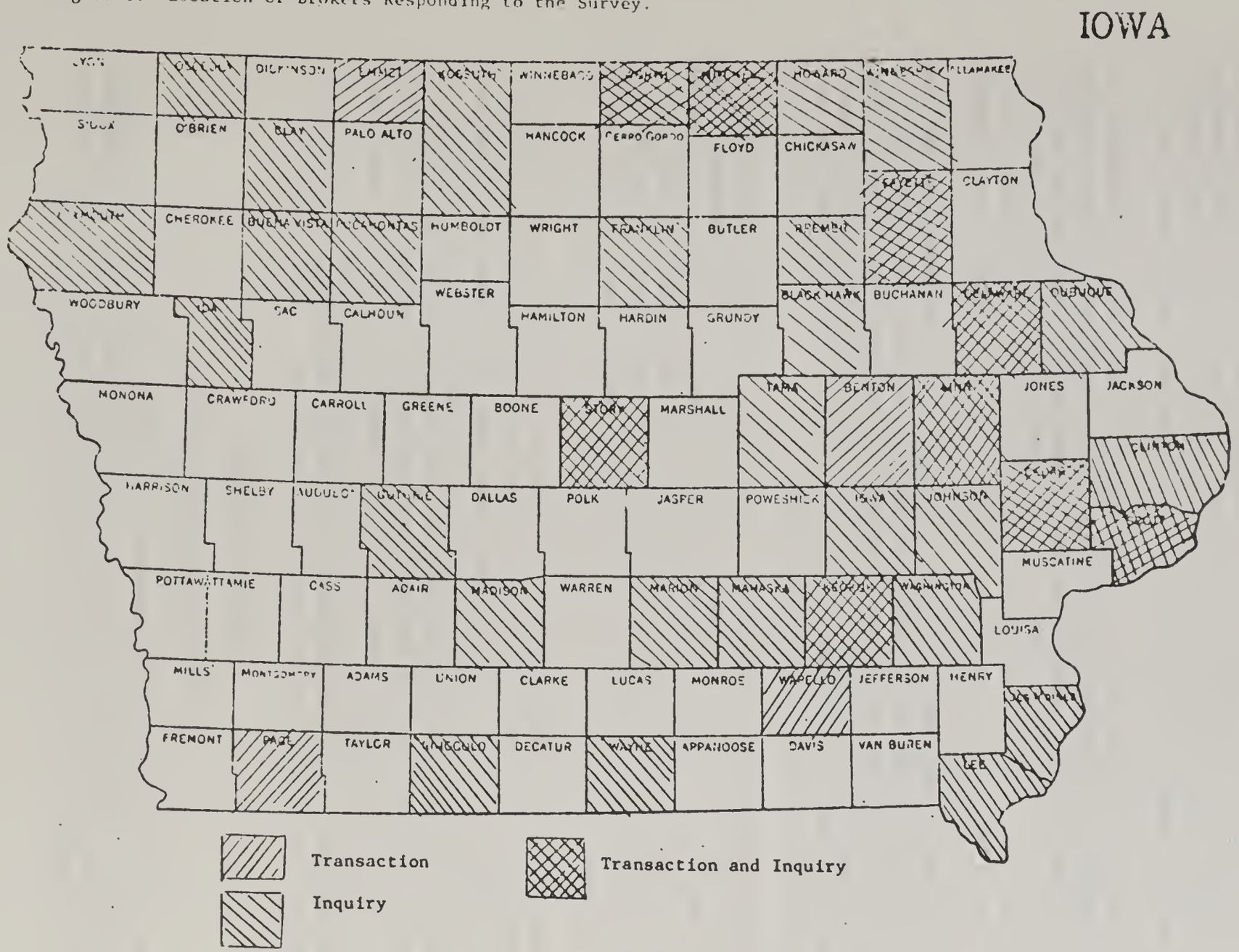
A number of questions are being raised with regard to foreign investment activity. What are the motivations of the investors? Are there large inflows of capital entering the Iowa economy as a result of this phenomena? Is there a shift away from local operation or a shift in land use? What is the local reaction to the reported activity? Is there a measurable impact on the land values? Does foreign investment involve large amounts of land? These are the issues the following discussion will attempt to clarify.

Methodology for Data Collection

To collect the data for this study, a special six-month edition of the annual Iowa Land Survey, conducted by the Iowa Agricultural and Home Economic Experiment Station, was used. Questions were added to the survey which was mailed on May 1, 1975, to 710 registered real estate brokers in Iowa. The respondents were asked to report foreign investment

1/ Des Moines Sunday Register; Oct. 14, 1973 and Feb. 9 and Aug. 6, 1975. Cedar Rapids Gazette; Jan. 10, 1975, Jan. 26, 1975; March 23, 1975, April 20, 1975.

Figure 1. Location of Brokers Responding to the Survey.



activity of which they were aware, and to differentiate in their responses between inquiries made by potential investors and completed transactions involving foreign interests. Five-hundred eleven brokers returned the questionnaire, with at least three coming from each county. Sixty-five brokers indicated some type of activity--54 reported inquiries and 30 reported transactions. The spatial distribution of the brokers reporting transactions and inquiries is shown in Figure 1. A complete summary of the responses is given in Appendix A.

The next step was to contact each of the 65 respondents by letter, and request a follow-up personal interview. Fourteen brokers consented to such an interview, and these were conducted during June and July of 1975. Nine of the interviews were with realtors reporting foreign inquiries only, and five were with realtors reporting completed transactions. From these discussions, a description of each case of inquiry or transaction was compiled. For each reported transaction, county courthouse records were reviewed to verify that a transaction had, in fact, occurred and to ascertain the details of title transfer. The reported inquiries and transactions were also compared with data developed by the Iowa Agricultural Stabilization and Conservation Service. From this source, additional transactions were identified and then researched in local county courthouses.

Several limitations or qualifications of the methodology should be mentioned at the outset. First, the 65 initial broker responses from the Land Value Survey apparently include numerous multiple observations on the same transactions. The Land Value Survey asked for cases of which the respondent had knowledge, not necessarily those with which he was personally involved. In an specific local area, several realtors could have knowledge of a transaction and could have reported it.

Second, the five interviewees who reported on transactions were not personally involved in the negotiations and could give only indirect information. Third, the 14 brokers who were interviewed were unable to give much information concerning the background of the investors because intermediary representatives often were involved at the local level. Finally, some of the realtors who granted interviews displayed an unfavorable attitude toward foreign investment in Iowa. Realtors with a more favorable attitude toward foreign investment, and thus were more actively involved, may have declined to participate for fear of drawing local attention to this sensitive issue.

Interview Results

Inquiries and Transactions

Nine realtors reported 13 investment inquiries and 5 realtors reported 7 complete transactions. Data on 3 other transactions were subsequently documented from sources other than the interviewed brokers. A summary of the characteristics of the 10 transactions appears in Table 1.

Inquiries

The inquiries, with one exception, all occurred after the beginning of 1974. The exception, which took place in 1972, involved a broker who operates within a large geographic area and received a foreign inquiry about land availability through his involvement with a national, professional realtors' organization. This early case seems to precede the more recent Iowa activity because the particular realtor had contacts considerably beyond the local area. The remaining 12 inquiries occurred during 1974 and 1975. The normal length of negotiation between initial contact and cessation of discussion was from 30 to 60 days. In several instances, further negotiation did not occur because the broker declined to participate.

Transactions

The transactions were all completed in 1974 or 1975 with negotiations lasting from 2 to 4 months. Eight of the 10 transactions resulted in title transfer or land contracts recorded at county courthouses. Three transactions have dates of instrument in February 1975; two are in January 1974; one is in December 1974; one is in March 1975 and one is in August 1975.

Table 1. Summary of Transactions Characteristics

Characteristics	Transaction 1	2	3	4	5
Price Per acre	$750	$1000	$1300-$1400	$1300-$1400	$1500
Size in acres	202	536	400	700	400
Seller	Non-farmer	Retired farmer	Active farmer	Active farmer	Retired farmer
Land Use	Cash grain	Cash grain	Cash grain	Cash grain	Cash grain
Investor Nationality	German	German	Italian	Italian	German
Nature of Purchaser	Individual	Individual	Individual	Individual	Corporation
Motivation	Secure wealth	Secure wealth	Secure wealth	Secure wealth	Secure wealth
Financing	Contract	Contract	Unknown	Unknown	Contract
Operations	Rented locally	Rented locally	Rented locally	Rented locally	Rented locally
Local Reaction	Indifferent	Indifferent	Negative	Negative	Indifferent

(continued)

Table 1. Summary of Transactions Characteristics (cont.)

Characteristic	Transaction 6	7	8	9	10*
Price per acre	$1500	$1500	$1500	$1650	$1625
Size in acres	50	320	160	240	2125
Seller	Estate	Retired farmer	Retired farmer	Estate	Non-farmer
Land Use	Cash grain	Cash grain	Cash grain	Cash grain	Cash grain
Investor Nationality	German	German	German	German	German
Nature of Purchaser	Corporation	Individual	Individual	Individual	Individual
Motivation	Secure wealth	Secure wealth	Secure wealth	Secure wealth	Unknown
Financing	Contract	Warranty deed	Warranty deed	Warranty deed	Contract
Operation	Rented locally	Rented locally	Rented locally	Rented locally	Rented locally
Local reaction	Indifferent	Negative	Negative	Negative	Unknown

*This transaction involved the sale of four tracts of land to two related couples (two sisters and their husbands). The sale included the land and all improvements, growing crops, and all personal property used in connection with the land and improvements except the tractors and trucks. It should be noted that each tract was less than 640 acres, and was purchased in sole ownership by one of the investors. Thus, the Iowa regulation regarding the maximum acreage to be owned by a non-resident alien (640 acres) does not apply.

Characteristics of the Land

The location of the land in the documented transactions and inquiries are shown in Figure 2.

Inquiries

Some realtors were contacted about any available land in their local area; others were contacted about specific tracts they had listed for sale. Only one of the realtors involved with the inquiries dealt with land beyond the local area.

Several investors specified in their inquiry that price was no concern or was not a limiting factor. All of the per acre prices quoted were in the $1,000 to $1,500 range, and all of the brokers indicated that these prices were at the top or somewhat above the fair market value of good-quality land in the area. All of the investors wanted only top-grade land. Sizes of land tracts desired by the potential investor varied considerably in the inquiries, from 240 to 5,000 acres. Inquiries for smaller tracts typically involved specific farms listed by the realtor. The larger tract sizes were the sizes the investors indicated they would like to acquire. All of the investors wanted to use the land for cash grain operations. All wanted top-grade, tillable soil without improvements. In several cases where specific, listed tracts were considered the transaction was not consumated because of the presence of buildings on the land. Several investors wanted to buy only the tillable area, and split off the acres relating to any livestock operation.

Transactions

The 10 transactions were located in the following counties; 2 in Fayette County, 2 in Linn County, 3 in Cedar County, 1 in Worth County, 1 in Mitchell County and 1 in Kossuth County[1/]. The prices paid per acre ranged from $750 to $1,650. The prices for all 10 transactions appear in Table 1. The land in every case was reported to be of the best quality in the area and the brokers indicated that these values were at the top of prices being paid locally, and in several cases had set a new high value. The sizes of the farms in the transactions, ranging from 50 to 2,125 acres, are summarized in Table 1.

The sellers were local residents in seven cases and absentee owners in three cases. In two instances, the previous owners were active farmers, in two instances the seller was the estate of a deceased farmer, in four cases the sellers were retired farmers, and in two cases the seller was a non-farmer. In six of the situations where the land had been

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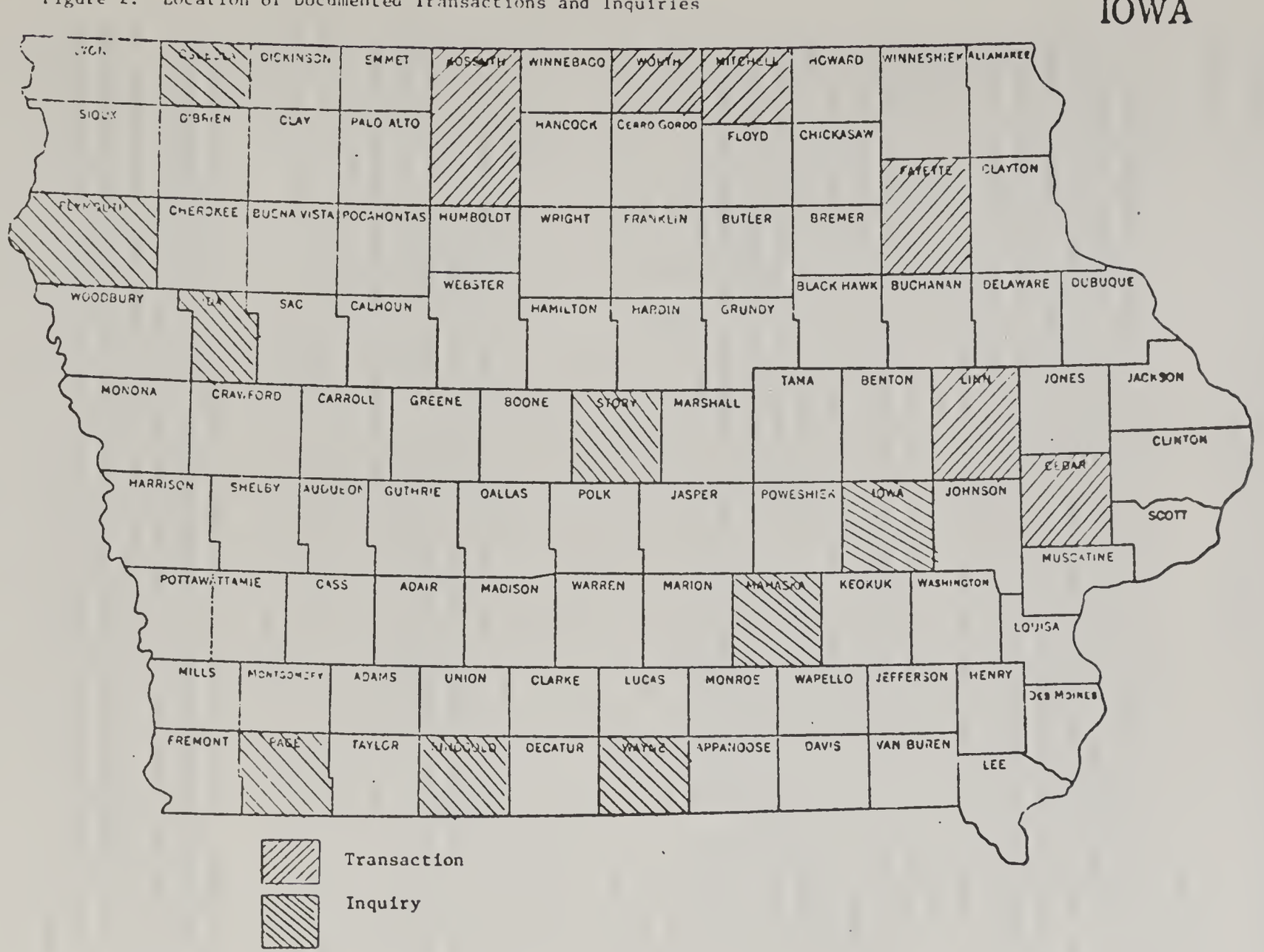
1/ The Kossuth county transactions actually involved four closely related investors (two sisters and their husbands), who purchased the real estate from one individual. Because the purchases were all made at the same time with identical terms, they are treated as one transaction.

Figure 2. Location of Documented Transactions and Inquiries



leased before the sale, a new tenant was placed on the land by the foreign investor. These new tenants were all local residents. All of the transactions involved cash grain operations primarily. The foreign investors showed little or no interest in livestock operations.

Nature of Investor

Inquiries

Of the 13 reported inquiries, 8 were from West Germany, 4 from Japan, and 1 from Belgium. Not all realtors were able to discover whether they were dealing with individuals or with corporations. Seven inquiries were reported to be from individuals and three from corporations. The occupational background was not clearly discerned in any of the cases, nor was the degree of familiarity with U.S. agriculture. The existence of other U.S. investments was not clearly established.

The motivation of the West German inquiries was to invest their funds in an asset that would be stable in value and secure from loss. The interest in only the best tillable land and cash grain operations, the suggested rental arrangements involving this land, and the questions and comments by the investors all substantiate such a motivation. One investor asked for "land of value for generations to come." A German investor expressly mentioned his concern that the withdrawal of U.S. troops from western Europe would lead to eventual Russian control, and he wanted to put his funds into property across the Atlantic Ocean. Three other inquiring investors, all Japanese, indicated that a yearly return on investment was their purpose in acquiring the land. Their questions and comments were more concerned about operations and production potential than with capital appreciation.

Transactions

Two of the land transactions reportedly involved an Italian individual. These transactions have not been recorded in any offices of the county courthouse. Two transactions involved an Iowa corporation which is reported to have West German stockholders. These transfers are recorded in the courthouse, with the corporation listed as grantee in the title transfer. Three other farms are reported as having been purchased by West German individuals, but the title transfers list only trust account numbers as grantees. Three transactions were with West German individuals in whose name the courthouse records list ownership.

Once again, the brokers report that the investors wanted to acquire a store of value and secure personal wealth. Very little is known concerning these foreign investors' occupations, other investments, or familiarity with U.S. agriculture. The transactions were negotiated through a number of intermediaries; little, if any, direct contact took place between the non-resident aliens and local residents or brokers.

Intermediary Channels

One of the most varied characteristics between both inquiries and transactions is the structure and nature of the intermediary channels between the foreign interest and local seller.

Inquiries

With regard to the inquiries, the following situations were encountered. In four instances the foreign investor employed a U.S. realtor of national or regional scope to contact local Iowa brokers and inquire about listed farms or about the general availability of land. In several cases, the realtors were from Minnesota and were working for West German interests. In one case the realtors were from California and were working for Japanese investors. There were two instances, one German and the other Japanese, in which the foreign investor sent a personal business agent, also an alien, to the local area to contact realtors about land. A German investor sent a business agent to the United States who contacted a local broker about specific, listed farms. One foreign investor employed a foreign farm management firm to contact a Kansas City, Missouri, bank, which then inquired of the Iowa realtor about a listed farm. In a more complex situation, the German investor employed a Canadian realty firm that contacted a Wyoming broker who then dealt, through a state-wide Iowa realtor, with the local broker. Lastly, a Japanese investor sent a personal business agent to a Des Moines bank that contacted the local realtor, again concerning listed farms.

Transactions

With regard to completed transaction intermediary channels, two sales were handled by a local resident who was a stockholder in an Iowa corporation representing German investors. The negotiation was handled directly between the investing interest and the sellers without intermediaries. In three transactions, the German investor employed a Chicago bank that contacted a local bank that acted as the local representative for the various sellers. No information as to the intermediary structure was available for the five other transactions.

Nature of Negotiation

Inquiries

Negotiations between local parties and the investor representatives took place by several means. Initial contact in the inquiries was usually by letter of telephone. While most brokers continued their interactions by these means, four also received personal visits by the potential investor's representative and in one case by the investing party. Brokers involved with inquiries reported several different types of obstructions to negotiation. The most prevalent reason for a breakdown

in negotiation was the lack of suitable land to meet the investors specifications. Land proved to be non-suitable because of such factors as poor soil quality, too small tract sizes, and the presence of improvements. Non-availability of suitable land was cited as the major impediment by seven of the realtors. In two cases, the price demanded by the potential seller was considered too high by the investors. In three cases, adverse local reaction, to which most investors seemed quite sensitive, caused a cessation of negotiation.

Transactions

The transactions were also negotiated by letter and telephone; the activity in five cases also involved personal visits from investor representatives. In all transactions and all inquiries but one, the sales process was or would have been by private negotiation. In one inquiry, the land under consideration was sold at public auction, but the foreign representative chose not to participate in the bidding.

Financing Arrangements

Inquiries

Not all inquiries included details on the type of financing arrangements desired. Of those that did, two wanted to enter into a land contract, four specified a cash transaction, and one wanted a contract or mortgage, with a large downpayment.

Transactions

Financing details for the transactions were ascertained from public records at the county courthouses. The three transactions in Cedar County involved general warranty deeds; all apparently were cash transactions. The two in Linn County involved land contracts. One farm sold for $97,000, with $10,000 down, an $18,000 payment the first year, and $9,000 every year thereafter. The second farm sold for $614,000, with $75,000 down and a $45,000 annual payment. The Fayette County transactions are not recorded in county offices, and the types of financing are unknown. The Worth County transaction was shown as a land contract; title will not pass to the buyer until 40 percent of the $565,000 price is paid. Earnest money in the transaction was $40,000, paid August 16, 1974; first payment of $120,000 was made March 1, 1975. A second payment of $125,000 is due March 1, 1976; every year after that, a payment of more than $15,000 but less than $35,000 is to be made until the debt is retired. The interest rate on the unpaid balance is 7 1/2 percent annually throughout the life of the contract.

The Mitchell County transaction is also on contract; title does not pass to the buyer until 40 percent of the $148,470 price is paid. The downpayment was $20,000; interest is paid on the declining balance at an annual rate of 7 percent. The contract calls for a minimum annual payment of $2,500 and a maximum payment of $10,000. The entire balance is due in 1995.

The Kossuth County land was acquired on contract; 30 percent of the purchase price was payable on data of closing, 20 percent on August 1, 1976, and the balance in equal annual installments with the final payment due on August 1, 1986. The interest rate on the unpaid contract balance was specified at 7 percent. Upon payment of 50 percent of the total purchase price, the buyer will receive a warranty deed and execute a mortgage to the sellers for the remainder of the indebtedness.

Farm Operation

Inquiries

Only one inquiry included any indication of the desired operating arrangement. An investor who had expressed interest in a particular 440 acre tract also said it could be leased back to the present owner-operator. Rent would have been on a cash per-acre basis sufficient to cover annual taxes and costs. The realtor reported that such a rent would have been equal to the local average rent levels.

Transactions

For the completed transactions, the land is leased to a local operator in all cases. In five cases, the lease provides for a cash rent per acre, and in two cases a crop-share lease is involved. One of the farms will be custom farmed. Rental arrangements for two of the transaction farms are unknown.

In three transactions the investor reportedly employ a local bank for managerial assistance. In two transactions, a local resident stockholder in the controlling corporation provides the management, and in one transaction an out-of-state farm management service and an Iowa resident provide the management input. In four transactions the source of managerial assistance is unknown.

Local Reaction

Of the 14 realtors interviewed, a large majority indicated an unfavorable local reaction to foreign interests acquiring farmland in the community. Eleven reported that farmers objected to such activity for fear land prices might rise beyond the bidding potential of local people. Several farmers in one county told a realtor that they "felt priced out of the land market" after the foreign land acquisitions raised seller's expectations of what their land was worth. In one instance, many farmers expressed strong resentment toward the local bank that acted as an intermediary. The same 11 brokers felt that area non-farm residents and merchants were also generally opposed to alien investment. Most of them expressed fears of loss of local control in the community. One realtor reported a situation in which 240 acres were to be sold at public auction. A Japanese investment agent visited the local area and inquired about the farm at the office of the realtor-auctioneer who was arranging the sale. The agent was strongly discouraged from bidding by the local people, who informed him that outside interest were not desired by the community. The foreign investor declined to participate in the auction. Several

brokers mentioned that their communities wanted to maintain strong ethnic traditions, and local residents perceived foreign traditions, and local residents perceived foreign investment as an erosion of such tradition where the interested investor was not of the same ethnicity.

In three cases no negative response by either local farmers or townspeople was reported. In one of these the investing corporation had a local resident, as well as foreign interests, holding stock in the firm. The local person was reported to be active in the corporation's operation; all other investors maintained a low profile. In another instance in which local reaction was somewhat positive, a 7,000 acre purchase of land by out-of-state interests in 1967 had brought beneficial changes to the local economy. The realtor felt this earlier transaction had increased local acceptance of foreign investment. In the third community the local population is of German descent and the investors were also German. This fact, plus the belief that only limited amounts of land were involved, tempered local attitudes. Local residents saw the level of activity as relatively small compared to the total land holdings of the area, and thus perceived no threat to local control of the community.

The brokers' own attitudes concerning the foreign investment varied considerably. Six indicated they were opposed to such activity. Their major concern was that they were local businessmen and did not wish to offend local farmers and thereby jeopardize their business. One broker was told by his local banker to take his accounts elsewhere if he sold any land to alien interests. Three of these realtors also mentioned a desire to maintain local control of the community, and fear of a system of absentee landlords. Several of these realtors refused to deal further upon learning that alien investors were involved.

Four brokers expressed indifferences to foreign investment. The 4 felt that the level of such activity was relatively small, and as long as regular land use and local operation were maintained it would not be detrimental to the community.

Four other realtors were in favor of alien investment. Some of these brokers had solicited contact with foreign interests, but at least one case involved land 70 miles from the broker's local community. These realtors felt that foreign investment was part of free competition, and anyone had the right to make an investment in a farming operation and to earn a competitive return on their investment. They also stated that benefits could be derived from the infusion of outside capital into the local area.

Conclusions and Recommendations for Further Study

Conclusions

The following tentative conclusions are offered. Because they are derived from a limited sample of respondents who may possibly be biased,

the implications of these results should be accepted with a great deal of caution.

The motivation of investors appears to vary with national background. German investors seem to be motivated mainly by a desire to secure their personal wealth by purchasing high-quality land, sometimes at premium prices, with less concern about short-term operation or production potential. The Japanese interests appear to be motivated by a desire for favorable annual returns on their investment. In the alien acquisition of Iowa farmland, there has been no indication of purely speculative intent or of any desire to secure U.S. agricultural commodities for foreign consumption.

Local reaction to alien investment activity is often unfavorable, particularly if the local residents fear an increase in land prices or the loss of local control in the community. Otherwise, local reaction apparently has not been adverse. Unfavorable local reaction may be causing some foreign investors to conceal their involvement by complex intermediary channels, or by not listing themselves publicly as owners of record.

The current inflow of foreign capital into Iowa appears to be small compared to the total capital in the agricultural sector. Only a very limited number of foreign investment transactions in farmland can be documented. It should also be noted that many of the transactions have involved a contract with the investment funds coming into the state over time as the contract payments are made.

Investment by non-resident aliens surveyed has not altered the land use of the tracts acquired. In all cases, land was and continues to be used for grain production. Local residents continue to operate the land after it is purchased. Land prices paid in some instances appear to have raised expectations of other sellers in several local areas, causing them to demand higher prices for their land. A significant influence on land values beyond the specific localities surveyed has not been documented.

The amount of land involved in foreign acquisitions, relative to the total farmland in Iowa, is small. The number of inquiries is much higher than the number of actual transactions, as foreign investors often find land is not available to meet their specifications or they encounter strong local opposition.

Hypotheses for Further Study

This preliminary survey leads to the following hypotheses that merit further empirical investigation.

1. The primary motivation of the foreign investor (with some exceptions, notably the Japanese) to acquire farmland is to obtain an asset that will be a store of value or wealth, rather than a source of current income.

2. The investment in farmland by foreign investors has not been motivated by attempts to gain control of U.S. commodity supplies or access to U.S. farm production technology.

3. Acquisition of farmland by foreign investors has little impact on the intensity of land use, the production practices utilized, or the level of management compared to other investors or farmers.

4. Foreign investors own and have control over a very small proportion of the farmland in the state of Iowa or in any county or township in the state.

5. Foreign investors want to acquire high-quality, larger-than-average size units with no improvements, and are willing to pay premium prices for these units.

6. Foreign investors have increased the sales price of real estate in local area by paying premium prices for land, thereby increasing the expectations of other local sellers.

7. Strong negative reactions by communities to foreign investment has been an effective force in discouraging foreign investors.

8. The nationality of foreign investors in Iowa and U.S. farmland is closely related to availability of land in their own country.

9. Ethnic background and extended family relationship to U.S. citizens in the locality influence the nationality of the foreign investor and the location of the farmland in which he has an interest.

10. Because of the concern for negative reactions in the local community, elaborate intermediary channels are frequently developed to conceal the identity of the foreign investor.

11. Most foreign investors lease the land to local operators, and the lease arrangements do not vary significantly from those of domestically owned farms.

To test these hypotheses, additional data must be obtained on the number and characteristics of foreign investment transactions. This information may be available from surveys and interviews with farm management firms, and banks and trust companies that are involved in the transaction or the management of the property. Interviews with local community leaders and businessmen may also be useful. However, it may be difficult to obtain unbiased data to test these hypotheses on a voluntary basis; it may be necessary to enact facilitating legislation to mandate reporting.

Further investigation into the background of alien investors should also be made to ascertain the investor's occupation, his other U.S. and foreign investments, and his familiarity with U.S. agriculture. This could best be accomplished by research and contact within the home country of the investors. Finally, the need for and effectiveness of legally required reporting systems that list all alien holdings should be evaluated.

APPENDIX A

Summary of Realtor Survey Responses

Transactions		
County	Acres	Nationality
Worth	340	German
Worth	320	German
Worth	900	German
Fayette	1000	Italian
Page	800	Japanese
Cedar	600	West German
Fayette	360	Italian
Linn	1000	German
Mitchell	202	German
Worth	530	German
Page	200	Japanese
Davis	unknown	Japanese
Cedar	160	German
Fayette	1240	Italian
Cedar	600	German
Cedar	240	West German
Benton	320	Italian
Benton	2000	Japanese
Mitchell	500+	German
Worth	500+	German
Linn	unknown	German
Worth	unknown	unknown
Cedar	unknown	German
Cedar	2000+	German
Cedar	900+	German
Cedar	unknown	unknown
Worth	500	German
Cedar	650	unknown

Inquiries		
County	Acres	Nationality
Worth	240	Japanese
Kossuth	2200	Arab
Fayette	unknown	unknown
Southern Iowa	400-800	German
Iowa	1440	German
Ringgold	2000	Japanese
Union	2000	Japanese
Guthrie	1500+	unknown
Madison	unknown	unknown
Linn	One Suspected	
Dubuque	Rumors--West of Dubuque	
Winneshiek	unknown	unknown
Mahaska	600-1000	unknown
Howard	unknown	unknown
Iowa	10,000	Japanese
Johnson	10,000	Russian
NW Iowa	640	German
Kossuth	21,000	German
Johnson	up to 300	Chinese
Clay	80-160	Danish
Buena Vista	unknown	English
Lee	unknown	Chinese
Van Buren	unknown	Chinese
Scott	320	unknown
Plymouth	240	Japanese
Cherokee	240	Japenese
Mahaska	1000	Jewish
Delaware	400-600	German
Mitchell	500-10,000	German
Howard	500-10,000	Italian
S. Minn.	500-10,000	Argentine
Central Ia.	300-500	Italian
Linn	640	Austrian, German
Wapello	460	German
Hancock	640	German
Adams	1000+	unknown
Floyd	920	Austrian
Bremer	1000+	German, Italian
Worth	120	German
Pocahontas	425	German
Pocahontas	400	Austrian
Kossuth	2100	Japanese
Mitchell	unknown	German
Cedar	160	unknown
Dickinson	unknown	unknown
Marshall	unknown	Japanese
Hardin	unknown	German

ECONOMIC IMPACT OF FOREIGN INVESTMENT IN REAL ESTATE

Folke Dovring*

Introduction

Terms and Proportions

In discussing direct investment, it is useful to distinguish between "real" and "financial" investment. Real investment is the creation of new real capital. When done by foreign concerns, this may bring into the country some actual capital goods (e.g., industrial equipment imported for the purpose), but more significantly it may bring in new technology, new managerial techniques, and heightened competition within the economy--all of which should be welcomed, up to some quantitative limit yet to be determined. This sometimes occurs in manufacturing, but on the whole it is unlikely to apply to U.S. agriculture.1/

Financial investment, by contrast, means the buying up of existing real capital in the country. No country could look with favor on such take-overs if they reach large proportions. The point is often made in countries where foreign investments are important, as for instance Mexico.2/

Among foreign investments, we should distinguish also between those which facilitate and help stabilize foreign trade, from those which represent a parasitic intrusion on the domestic economy. The former often entails some control of real estate, sometimes even in farm-related enterprises such as grain storage and meat packing; it then becomes a "hostage" of sunk costs which the foreign concern will

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1/ The Japanese-Italian venture in clearing North Carolina swamplands (reported October 1974) may be an exception.

2/ Cf. Bernardo Sepúlveda and Antonio Chumacero, La inversion extranjera en México. Mexico, D.F.: Fondo de Cultura Economica, 1973. Also Harry K. Wright, Foreign enterprise in Mexico. Chapel Hill, N.C.: The University of North Carolina Press, 1971.

continue to use as long as possible.1/ Holding real estate merely for rental income is different. Many of the conclusions apply also to urban rental property, but the focus here will be on farm real estate, where the conclusions are the most striking.

Possible magnitudes will decide whether foreign investment is, or may become, an issue in public policy. Foreign investment is like foreigners: a sprinkling does not hurt and will often be beneficial, but large concentrations may be disturbing to national life.

Volume of National Wealth and Foreign Assets

The total volume of tangible assets2/ in the United States is given in the Statistical Abstract, 1975 as $3.1 trillion in 1968; 73% of this value was real estate (23% land and 50% structures). Price index numbers let us conclude that the total now should be close to $5 trillion. Land's share of the value may have become somewhat larger as a result of recent price inflation.

These approximate numbers should be compared with the shaky information about the "dollar debt" and foreign investments already existing in the United States. The "dollar debt"--dollars held by foreigners--is basically a set of IOUs against the U.S. economy. Denying foreigners the right to buy for their dollars some things Americans can buy for them would, in principle, mean a partial demonetization of the dollar, which might have repercussions on our international financial status. The recently reported dollar debt, which may be in excess of $100 billion, would not of itself pose any threat of inundating the United States with foreign investments; assets abroad held by U.S. concerns are of a similar magnitude. Recent reports to the Congress (October, 1975) indicate that foreign investments in the United States have also reached $100 billion.

Even now, however, some sectors of the U.S. economy may be more vulnerable than others. Defense industries, transportation networks and marketing networks are sectors where a foreign "hostage" could be more than a trivial nuisance. Farmland can also be viewed as a special case: with a current estimated market value of about $370 billion,3/ U.S. farm real estate could already now be taken over to a significant extent if foreign owners of gold, dollars, and U.S. securities were to place their funds in U.S. farmland.

1/ Kenneth R. Krause, Foreign firms with investments in the U.S. food and fiber system. Washington, D.C.: Economic Research Service, U.S. Department of Agriculture, Agricultural Economics Report No. 302, Nov. 1975.

2/ On the concept of national wealth, cf. Raymond Goldsmith, The national wealth of the United States. Princeton, N.J.: Princeton University Press, 1962.

3/ Farm Real Estate Market Developments, USDA: Economic Research Service, July, 1975, Table 7.

The main thrust of this report is to explore what might be the advantages to foreigners, and the disadvantages to the United States, of a large-scale take-over of U.S. farmland.

Emphasis on Land

Land differs from most other forms of productive capital in that it does not depreciate. In most cases, land does not depreciate unless it is treated abusively. This permanence of value is most striking in land used for farming and forestry. Mining land, obviously, is in a different category. Urban site values may depreciate because of economic obsolescence. But good farmland endures forever. If managed tolerably well, it can continue producing food and income for untold future generations. The question is whether a nation would not shortchange itself by selling its land to recover money paid for imports which are less durable--e.g., a large part of the imported oil goes into current consumption rather than capital formation.

The point about farmland enduring forever while other capital depreciates may need some elaboration. Any accumulation of wealth can of course be made permanent if proceeds are skillfully reinvested to make up for depreciation. But this requires careful management--an additional production input which includes unceasing attention to new opportunities to offset losses through obsolescence, both technological and economic. Thus, foreign investments in industry and commerce are vulnerable to the vagaries of future change. Investment in farmland (and in well protected city sites) needs no input except routine managerial services which are available for hire at standard rates. The permanence of such investments need not be questioned. There is no reason why they should not last forever, especially if the investor is a large public or para-public entity in a foreign country with some economic clout.

Rate of Return in Social Account Versus Private Account

The difference between social-account and private-account rates of return is important to our subject for several reasons. Basically, society as a whole should be concerned with the ownership of wealth, particularly as this may affect the future welfare of the country.1/

Between private and social account there is first of all a difference in time horizon. Moreover, society as a whole is interested not only in net returns but also in social product, employment, and income distribution. The level of land values reflects both direct and indirect income, and is in part the result of national economic policy. All of this becomes particularly significant when a foreign land buyer is an agent for a foreign national interest--as may well

1/ Cf. Politics of land. Ralph Nader's study group report on land use in California. Robert C. Fellmeth, Project Director. (Introduction by Ralph Nader). New York: Grossman Publishers, 1973.

happen in the future when oil exporting countries seek large-scale investments.

Tax advantages also play a role and seem to favor foreign over domestic private land buyers. For this and other reasons, foreign buyers may outbid domestic private buyers on the U.S. farm real estate market.

We now want to examine the factors that make land valuable.

Theory of Rent and Land Value

Standard Theory

Under standard theory, the market or asset value of land is the capitalized value of net land income.1/ There is some accounting difficulty in establishing the net rent (economic rent) in each case, but this problem will here be treated as though solved. In its simplest form, the capitalized value of a non-depreciating asset is the reciprocal of the rate of interest: if the income is $1,000 per year and the interest rate is 5%, the asset value should be $20,000, and so on.

Proof of the validity of this formula is found by computing "present value" of a sum payable in the future. The more remote the date of payment for a given amount of property income, the lower the value to the present holder of the claim. One could secure the same future income by investing an amount (in the present) which is smaller than the amount needed to invest in order to secure the same amount at an earlier date. For a more remote date of payment, compound interest will have more time to build up, and vice versa. For instance, if the interest rate is 5%, the present worth of a dollar receivable in the future is 95.2 cents for payment next year, 61.4 cents for payment 10 years hence, 37.7 cents for payment 20 years hence, and less than 1 cent for payment 100 years hence.

All of this assumes that property does not depreciate. For depreciable assets, the computation of future value is more complicated. For annuities payable indefinitely into the future--the case of good farmland--a table showing the present worth of future payments up to some specified year will give the relevant information (the Inwood coefficient).2/ The sum of present values of future payments can never exceed the capitalized value of the annual income.

1/ For instance, Richard U. Ratcliff, Valuation for real estate decisions. Santa Cruz, California: Democrat Press, 1972; Alfred A. Ring, The valuation of real estate. Englewood Cliffs, N.J.: Prentice-Hall, 2nd ed., 1970; and Robert C. Suter, The appraisal of farm real estate, Danville, Illinois: The Interstate Printers and Publishers, 1974.

2/ E.g., Alfred A. Ring, The valuation of real estate, op.cit., Appendix 3.

In the case of a perpetual annuity (with no depreciation of the asset), the purchaser will not in his lifetime recover the present value of the purchase price, except by selling the property. The higher the rate of interest, the closer he will come to recovering the price without a sale. For instance, if the planning horizon of an individual is 25 years, the following will hold for an income of $1 per year:

Interest rate %	Purchase price $	Present value of 25 annual payments, $	Same as % of purchase price
3	33.33	17.41	52.2
5	20.00	14.09	70.0
8	12.50	10.67	85.4

The lower the rate of interest, the smaller is the share of present value that is recovered within the planning horizon, and the larger is the share that is handed over to whoever will hold the property after the end of the planning period.

This is what is usually referred to when we say that society can afford to accept a lower discount rate than individuals, because society may take a longer view than individuals can afford to do.1/ This does not preclude the fact that society, as well as individuals, will always prefer to earn a higher rate of return on investments, whenever such a higher rate is available. But in a competitive situation, where bidding a higher purchase price means offering to accept future income at a lower discount rate, society will be more at liberty to bid for resources in a way that implies a lower rate of return. This is because, in social planning, the fact of securing income for future generations may carry a higher value preference than individuals can afford under modern conditions.2/

What length of planning horizons countries could or should accept is not entirely clear. Wibberley3/ suggested a social-account planning horizon double that of private account, or 50 years instead of 25 (2% versus 4% discount rate), and found this implicitly confirmed by data on costs and returns on the Dutch polder projects. If we follow the Club of Rome, a suitable social-account planning horizon would be 70 years, because this is the average life expectancy

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1/ Thus Gerald P. Wibberley, Agriculture and urban growth. London: Michael Joseph, 1959, p. 209.

2/ This was different in a pre-industrial, highly land-based society, where investment alternatives were scarce and a closely-knit extended family placed high value on future economic security for the group. This explains the morality under which land could be bought but not sold by provident people; see Luigi Einaudi, "Categorie astratte e Scatoloni pseudo-economici", in La Riforma Sociale, Nov.-Dec. 1934; cf. Giuseppe Medici, Principles of appraisal, Ames, Iowa: The Iowa State College Press, 1953, p. 183.

3/ G. P. Wibberley, op.cit., p. 212.

of the children born this year. At 3% interest, the present value of 70 annual $1 payments will be $29.12, or 87.4% of the purchase price.

These several observations will hold under certain basic assumptions: stable value of money, fiscal neutrality, predictable economic trends hence low risk. Inflation, uneven tax incidence, and high risks due to unpredictable technological and economic changes will introduce several complications, all of them more in evidence in the present world than during more placid times of the past.

Inflation and Capital Gains

Because inflation is mainly a disruptive force in our present economy, public debate tends to overlook the fact that not everybody is hurt by it. Inflation tends to redistribute wealth, and the beneficiaries are the parties owing money. Fiscal problems of federal, state, and local governments are relieved by inflation which erodes the value of their bonds. Owners of encumbered real estate benefit from the reduction in value of their mortgage debts. Depending on the proportions between debt and equity, and between the rate of interest paid on the debt and the rate of return on the real estate--and, of course, on the rate of inflation--capital gains on this account may become large. The capital-gains tax introduces some further complications.

Foreign investors, especially those representing governments in OPEC countries, may or may not take advantage of the opportunities for capital gains on encumbered real estate. They can avoid the capital-gains tax by holding on to the land indefinitely.

Even independently of inflation, there are often long-term tendencies for the real value of land to rise with overall economic growth, as pointed out a hundred years ago by Henry George. This was the case with U.S. farmland until about 1912, and again since the late 1940s. Such prospects of capital gains (independent of inflation) are now perhaps greater than in most times in the past. Present and prospective shortages of natural resources should increase the factor share of such resources in the national product. This will lead to capital gains (unearned income) to the owners of such resources--whether the properties are mortgaged or not, but more so if they are.

The combination of conventional income and capital gains (inflation related or otherwise) can bring the total real return to land to impressive levels. For the period 1940-60, this composite rate of return has been computed to have exceeded 8%.1/ The highest rates occurred in the 1940s, because of a combination of high farm-product prices and a high rate of inflation. Similar calculations are not

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1/ David H. Boyne, Changes in the real wealth position of farm operators, 1940-1960. East Lansing, Michigan: Michigan State University Agricultural Experiment Station, Technical Bulletin 294, 1964, p. 64.

available for more recent years, but the rate of return to money in farmland purchases in the 1960s (or even in 1970-72) must now be very high.

Tax Incidence

The public powers receive income from land in several ways: real estate is subject to the local (county-level) ad valorem tax; visible income from land is subject to federal and state income taxes; capital gains realized by sale are subject to income tax although at a lower rate than other income; and estate and inheritance taxes are also due on real estate.1/

Of these taxes, only the ad valorem real-estate tax invariably strikes all land in the United States except when owned by public bodies. All foreign landowners, other than diplomatic missions, have to pay real-estate tax for their land holdings.

To the extent foreign (nonresident) landowners pay income tax for incomes from their land holdings in the United States, this is not likely to be the same for all countries or all tax subjects. Treaties to avoid double taxation vary from country to country. If ownership is exercised through a corporation chartered in the United States, income tax will be due on its land income.

Capital-gains taxes can generally be avoided by corporate entities, to the extent they avoid disposing of the land. Corporate entities holding land for rental income rather than for productive investment may well hold their land indefinitely. Private shareholders will pay inheritance and estate taxes on shares inherited, but this might never come due if the corporation is owned by some public entity such as the government of an OPEC country.

Thus, foreign nonresident landowners can escape a large part of the tax burden sustained by U.S. landowners. A land trust established by, say, an OPEC country in the Middle East could escape all U.S. taxes other than the real-estate tax. This means two things. First, the rate of return per acre earned by such a foreign owner becomes higher than that earned by an individual U.S. resident; to this extent, such foreign owners can afford to pay more for the land. Second, the resources of this land remain indefinitely removed from the income sources of governments in the United States, unless drastic changes are made in the tax system.

Domestic corporate entities enjoy some of the same advantages as foreign owners, but usually not all of them. Even to the extent the advantages are the same, the effects on the domestic economy are not. In domestic social account, taxes are transfer payments, and tax

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1/ Cf. Mason Gaffney, "Adequacy of land as a tax base", in The assessment of land value, ed. Daniel M. Holland, Madison: University of Wisconsin Press, 1970, pp. 157-212.

savings by domestic corporations become income of domestic persons or entities (unless the shares are held by nonresident foreigners). To this extent, such income again enters the circuit from which domestic taxes are levied.

Risk Incidence

Part of the attraction of land ownership is the low risk, compared with many other investments. This is particularly evident in good farmland: it cannot be destroyed by any likely accident. Low risk is in itself an economic advantage, and it is reasonable that there should be some tradeoff between risk and direct return: the safer the investment, the lower the discount rate that can be accepted.

This can be articulated by computing the cost of assuming a risk, as in insurance rates--which often are a normal part of the costs of operation. Such "calculable" risks concern mainly physical hazards such as fire, hail, etc., which can be predicted in the statistical sense. The risks of business venture are less predictable and usually not to be covered by insurance. Owners of large assets instead insure themselves by devices such as portfolio management, product diversification within firms and mergers of firms for the same purpose, and intelligence about impending economic change. All of this requires a management effort which is an important and high-value input; its market value should be included among costs when net earnings from risky business are computed. In regard to good farmland leased to competent farm operators, the necessary management input (on the part of a landowner) is modest and essentially routine, and it is readily available for hire. Thus the low risk in farmland ownership can, at least in part, be rationalized to justify a lower discount rate than in the case of riskier investments.

Another aspect of the same problem can be seen if we consider the fact that the high rates of return obtained in some kinds of business venture are the gains of the winners in a competitive game; the losers do not count, their losses fall to themselves, that is, to entities which cease to exist financially. Banks may absorb some of the losses of bankrupt firms, but mainly such losses become those of individual owners and shareholders.

The offset of losses against gains means that average returns to money are typically lower in social account than in the accounts of financially successful firms or persons.

This difference becomes evident, among other things, in the difference between bank rates of interest (and bond rates, too) and the returns to successful business investments. The return to "non-entrepreneurial" money is in fact quite low and sometimes negative. Our textbooks still give discount tables where 5% is regarded as a normal rate of return, with 3% and 8% as extreme lows and highs. This reflects a past when the factor share of capital in national product was larger than it is today; the counterpart is that the

factor share of labor is now higher than before. In the 1920s, when the value of the dollar was stable, prevailing bank rates of interest in the United States were about 2-3%. Around 1960, with creeping inflation, the bank rates divided by the rate of inflation also came to 2-3%. In recent years, with rates of inflation close to or higher than the bank rates (and bond rates) of interest, the net return to money has in fact been negative. A 5% interest rate on non-entrepreneurial money is therefore now unrealistic. Three percent must be regarded as a substantial rate of earnings. On real estate, capital gains are often more important than direct earnings.

Public Policy as a Source of Land Value

Since land value represents a capitalized income stream, it is logical that land values often reflect, among other things, the effect of public policy affecting income distribution.1/

In the United States, the benefits of federal farm support measures have tended to become capitalized as part of the value of farmland. This benefits farmland owners as such, rather than operating farmers as such. Estimates relating to 1970 were published by the USDA in 1972.2/ The highest rates of incremental land value attributed to farm support measures were found in the leading tonacco states, roughly in the order of their importance for tobacco production, followed by the Great Plains wheat states in similar order. In other states, where the two most highly protected crops had less significance, percentages of incremental land value attributable to federal support measures were also smaller.

These real-estate value effects of price supports are now likely to be overshadowed by the even larger land-price increases that have followed upon the dramatic increases in the market prices of many farm products.

The effects of policy on land values are studied in a recent book by Colin Clark3/ containing, among other things, empirical data from many countries. Several examples are given to show the connection between economic policy and land values. It is clear from Tables 39 and 40 3/, that land prices in the United States were among the lowest in the world--that is, before 1970. They still are, if not always to the same extent as before.

1/ Cf. Theodore W. Schultz, "Institutions and the rising value of man," in American Journal of Agricultural Economics, 50:5, Dec. 1968, pp. 1113-1122.

2/ Robert D. Reinsel and Donald D. Krenz, Capitalization of farm program benefits into land values. Washington, D.C.: USDA/ERS, 1972. Cf. C. Lowell Harriss (ed.), Government spending and land values. Madison, Wisconsin: University of Wisconsin Press, 1973.

3/ Colin Clark, The value of agricultural land. Oxford and New York: Pergamon Press, 1973.

Current U.S. data show an overall average value of farm real estate of $310 in March 1974 and $354 in March 1975,1/ with variation from $69 in New Mexico to $952 in Illinois, and values exceeding $1000 in the most highly urbanized states on the eastern seaboard. In comparison, land values in Europe are considerably higher. Among the highest are those in West Germany, where the average value in 1972 was given as DM 17010 per hectare, or more than $2000 for an acre.2/ The same source shows even higher prices in Belgium, but less than half the German level in France, the United Kingdom, Ireland and Denmark.2/ A recent compilation from France shows an overall average for 1974 of 11,750 francs/hectare, which translates into more than $1050 per acre; this again varies from $2,000 in the Paris basin to nearly $600 in some of the poorest regions of the country.3/ Current yearbook statistics from Denmark, the Netherlands and Sweden show averages close to $1000 per acre, and those from Ireland even higher values. The highest land values in the world are probably those in Japan, where the 1975 Statistical Yearbook reports values equivalent to a range of $5000-$7000 per acre, and even much higher values in metropolitan areas, combined with net rents usually on the level of 1% per year.

The effects of economic policy upon land values have thus been, to date, relatively modest in the United States. It follows that, if U.S. policy should henceforth give more of a boost to land values, the scope for future capital gains could be much greater here than in many other countries.

In connection with the low level of landvalues in the United States in the 1960s, it is of some interest to note the computations of differential economic rent and capitalized land values made in the Soviet Union since the late 1960s. This is purely an exercise in discovering differential productivity of land; no opening up of a nonexisting land market was contemplated. For the sake of illustration, comparable land values were computed, as a tool for economic planning. For farmlands, the value levels were somewhat similar to those for the United States in the same period.4/

1/ Farm Real Estate Market Developments (periodical), Washington, D.C.: USDA Economic Research Service, July 1975, p. 15.

2/ L. V. Bremen, "Landwirtschaftliche Bodenpreise in der EG", in Agrarwirtschaft, 23:7, July 1974, pp. 238-239. On West Germany, cf. also Reinhard Mantau, Preisermittlung auf dem Bodenmarkt, Stuttgart: Eugen Ulmer 1974 (Bonner Hefte für Agrarpolitik und Agrarsoziologie, Heft 4).

3/ La prix des terres agricoles en 1974. Paris, France: Ministere de l'agriculture, Oct. 1975. (Collections de statistique agricole, Etude No. 136).

4/ For instance, S. Cheremushkin, "O stoĭmostnoĭ otsenke zemli", in Ekonomika sel'skogo khoziaĭstva (Moscow), No. 12, 1967. For further references see Michael D. Zahn, The applications of economic rent in the Union of Soviet Socialist Republics, unpublished M.S. thesis, University of Illinois, 1975.

Intensity and Rent

A seldom discussed facet of land use and land value is the possible conflict between maximizing net rental income and maximizing value product (contribution to national income).

In an article published in 1938, Conrad Hammar made the distinction between efficiency and capacity of lands for agricultural use.1/ Lands are termed efficient to the extent they can produce high net returns per area unit, without necessarily using very large quantities of labor and other nonland inputs. Lands that can absorb large quantities of nonland inputs, and pay for them out of the value of gross production, have high capacity. Efficiency and capacity do not necessarily go together. For instance, high-rent lands in the central Corn Belt are not particularly attractive to highly input-intensive enterprises such as truck crops, except as favored location may dictate. Sandy soils in New Jersey, by contrast, are not very efficient at producing net rent per acre, but they have high capacity in that they can receive large amounts of inputs, as in truck crop production, and the value of the output will cover the costs.

For our present purpose, the distinction between efficiency and capacity in land use has two interesting and potentially important implications. One is that high-capacity lands may generate more employment, more labor income, and more value product (contribution to national income) than is sometimes obtained from high-efficient, high-rent lands. The other is that the distinction can be expanded from land qualities to cover also different enterprises on the same land--or on the same resources generally.

Thus, for instance, truck crops on first-rate Corn Belt soils may not yield any higher net rent than ordinary field crops, but those Corn Belt lands which happen to be used for truck crops (because of location or for other reasons) do generate more labor income and more value product per area unit than do similar lands used to produce corn, soybeans, and wheat.

The same distinction is, in fact, applicable to nearly all economic activity. It forms one of the principal reasons why we cannot accept the criterion of profit maximization as the sole criterion of social usefulness in an entrepreneur's choice of enterprises for his land and capital.2/ Profit maximization will be a valid criterion of

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1/ Conrad C. Hammar, "Intensity and rent", in Journal of Farm Economics, 20:4, Nov. 1938, pp. 776-791. On the concepts of primary and secondary intensity, see for instance Arthur C. Bunce, The economics of soil conservation, Ames, Iowa: The Iowa State College Press, 1942, pp. 28-29.

2/ Cf. Folke Dovring, A national economic policy for the United States. Urbana, Illinois, 1975, p. 3.

socio-economic usefulness only in the case that all available factors are fully employed. When this condition is not met, as when there is high unemployment and large excess capacity, there is a conflict between private (individual or corporate) interests and the public interest of the nation. A nonresident foreign resource owner also is often in a similar conflict with the national interest of the host country--probably even more so than are domestic individuals and corporations.

Tenure and Land Use

The distinction between efficiency and capacity in resource use explains some of the socio-economic disadvantages of absentee ownership. A landowner who is not a farmer can sometimes increase his rental income by going to a more extensive land-use system--value of gross output will go down, but if costs go down even more, net rent may rise. An operating and landowning farmer is more likely to aim at maximizing factor income, at least as long as this leads to more employment for the factors he owns--foremost, his own labor.

The potentially negative effect of absentee ownership of farmland is one of the standard arguments for land reform in low-income countries. In the United States, it has on the whole escaped attention, because the long period of surplus farm production did not call for maximizing output or land-use intensity. The new situation on the world's food export and import markets should redirect our attention.

Another reason why the absentee landlord has received little thought in the United States is the widespread ownership of farmland in the country. In the most important area of farm tenancy, which is the Corn Belt, nonoperating landlords are typically individuals with but small landholdings each; these people generally have no market influence. Operating conditions are essentially set by the tenant farmers who are often wealthier than any of their several landlords.

In the type of potential conflict just discussed, the foreign (nonresident) landowner would represent the extreme case of the absentee landlord. His stake in the wellbeing of the country and the community where he owns property is less than that of domestic (resident) landowners. The domestic landowner, if he is enlightened, and particularly if he lives in or near the same community, may see his advantage of increasing employment and labor income on his land, because this raises the local tax base. The foreign landowner is more likely to pursue maximization of his rent, and also of favoring relatively extensive enterprises (such as grain farming) because of greater ease in marketing the output.

This may sometimes justify the laws on the books in some foreign countries which, in various ways, prohibit or limit the ownership

of land by foreigners as in Mexico1/ and some European countries. The counterpart, that land ownership cannot be restricted within a free-trade area, has recently led to complicated problems among member countries of the European Common Market.2/

The charge of intruding upon the land system in a foreign country has sometimes been leveled against American investments abroad, as with the fruit companies operating in Central and South America. However, these companies originally went in because they needed to develop supply sources, and their landholdings have gradually become smaller in recent years, even in countries where there was no pressure of nationalization.3/

The possibility of large-scale take-overs of U.S. farmland by foreign interests would have no such justification in terms of upgrading the country's agriculture. The problem might not only be whether the foreign landowner would have less motive to maximize land-use intensity and factor income from their lands. Such foreign landowners, specially those representing foreign governments, could even use their land ownership as an economic lever: by maximizing rent rather than use intensity, they could also hold back production of certain crops in the United States, as a means of favoring production of the same (high-value) crops in their own countries.

Consequences for Real-Estate Markets

How soon foreign demand for U.S. farmland could reach such proportions as to affect land use will of course depend not only on the foreigners' demand for farmland but also on the rate at which farmland comes on the market.

Annual turnover on the U.S. farmland market is relatively low. In recent years, the number of transfers per year has averaged 5-6% of the number of farms in the country.4/ The average size of parcel sold was considerably smaller than the average farm in the country as well as in each state.5/ The average price per acre sold was somewhat higher than average per acre farmland value in each state,6/ as would be expected in a "parcel market." All told, some 100,000

1/ Cf. Martha Chavez Padron de Velasquez, El derecho agrarie en México, México, D.F., 1964, and idem, Ley federal de reforma agraria, 5 ed., rev., México, D.F.: Edicion Porrua, 1974.

2/ "Acquisition of land by allies", in: Land Reform, Land Settlement and Cooperatives, Rome: F.A.O., 1975, Year 1974, No. 1, pp. 102-108.

3/ United Brands Company, Annual Reports 1970-74; United Fruit Company, Annual Reports - 1969.

4/ Farm Real Estate Market Developments (periodical). Washington, D.C.: USDA, Economic Research Service, July 1975, Table 12.

5/ Ibid., Table 15.

6/ Ibid., Tables 7 and 14.

to 125,000 transfers of farmland occur each year in the whole country. Only 3-4 % of all farmland acreage (and value) change hands each year.

Actually, not all the transfers are open to bidding by outside buyers. Some transfers take place within families. Moreover, the transfers reported in the statistics include sales (sometimes of small acreages) intended for land use other than farming. The real turnover of farmland for continuing farming use, and on bona fide markets, is therefore lower than indicated by the numbers quoted above.

The low rate of turnover of U.S. farmland will limit the possible take-over by foreign buyers, unless extremely high prices are offered to entice more sales than take place normally. As the farmland markets are now functioning, only a modest number of farms could be purchased by foreign buyers in a single year. The general impact would not be significant, even locally, for several years.

However, the impact on local farm real-estate markets could become severe. With the small number of farm parcels offered for sale in a certain neighborhood in a given year, even a handful of purchases by foreign buyers might significantly reduce the opportunity for U.S. farmers and other resident investors to acquire farmland. This could raise the price level on farmland even further. This would present some short-run advantage to current sellers of farmland, but to the farming industry as a whole it would have the effect of increasing the capital requirement for entry into farming.

In the case of take-overs by para-public entities representing OPEC governments, their purchases might be permanently removed from the market, as in the case of endowment-held land. The base for the domestic land market would then gradually become smaller. If foreign-owned land were to be used at lower intensity than before, one effect might be a rise in the domestic demand for land still available for higher-use intensity.

Conclusions and Outlook

Standard theory reveals that large corporate land buyers serving foreign interests have some advantages over domestic private land buyers, because the former have reasons to apply a longer time horizon in their planning and so are able to bid higher purchase prices.

This advantage is further reinforced by capital gains and by tax avoidance. Inflationary capital gains may or may not play a similar role as for domestic land buyers--that remains to be seen--but the share of foreign land buyers in other capital gains is beyond dispute and these gains may be very large in years to come. At present, U.S. farmland prices are relatively low compared with other industrial countries.

Tax avoidance by foreign corporate buyers includes avoidance of the capital-gains tax, estate and inheritance taxes, and some of the income tax as well.

Risk incidence is also at a minimum for large corporate land buyers who may hire routine managerial services cheaper when their land-holdings are large.

All of these gains to foreign land buyers would be matched by losses to the domestic economy of the United States. In addition, the U.S. economy could also stand to lose because of lesser land-use intensity on lands owned by foreign interests, with less factor income and less taxable income being generated in the country. There could also be some negative effects on the farm real estate market.

The effect on the real-estate market could be serious within a short time, but the other effects would become significant only after the foreign take-overs reached some critical quantity yet to be determined. This would in any event take a number of years. Such a critical quantity could be different for different production areas, depending on what crops are important in each area.

The general consequences are twofold. First, a foreign government, e.g., that of an OPEC country desiring to secure income after the oil income has ceased, will have a good motive to bid higher prices for American farmland than individual Americans can afford. Second, the United States government may have a countervailing motive to secure these income opportunities for U.S. citizens in the future, and hence may want to interfere in the market process to this end.

But such interference, to be effective, would have to take place before any foreign take-overs of U.S. land have reached large proportions. Foreign take-overs of assets in the United States are in counterpart of U.S. debts abroad. The chief defense against such take-overs is therefore in avoiding the accumulation of over-large dollar debts. The alternative of "nationalization" of U.S. land at some later date is incompatible with the kind of international economic world to which the United States is pledged, explicitly by its announced international policies and implicitly by its dependence on imports of essential raw materials.

SOCIAL AND ECONOMIC IMPACTS OF FOREIGN INVESTMENT IN U.S. LAND

Mason Gaffney*

Foreign Land Purchase as an International Capital Transfer

Is foreign land purchase different from and less desirable than other foreign investment?

Land is not produced. Land purchase does not therefore directly create income as does investing in payroll to produce capital. Accordingly, the question has been posed whether domestic land purchase does not abort real investment and capital formation; and whether land purchase by foreigners does not abort the capital inflow from foreign investment.

In both cases the answer is "No, but...." Land purchase is simply a transfer from buyer to seller, who swap situations without changing the aggregates. An economy is a closed system with a zero sum of capital transfers. Money spent on land does not thereby leak out of the flow of funds. There may be some slowdown, as cash reserves are required to finance land transactions, but this is a continuing need, long since provided for. When sales turnover rises, and prices rise, cash needs may rise, a net leakage. In these inflationary times, however, this is not a major concern. Neither is it certain, because land in an active, rising market becomes a much more liquid asset, more similar to cash, thus tending to satisfy certain motives for holding cash and reduce the need to hold cash itself.

Anyone buying land is not employing domestic labor obviously and directly. He is, however, freeing up the seller's funds. The seller may buy more land, but land is fixed so there is always a net seller. Since the sum of capital transfers is zero, we would only waste effort to track money from seller to seller and speculate on what they all might do with money. What goes in must come out. The market is a going concern, the inflow and outflow are continual, and flows are simultaneous. We save trouble by looking just at net changes.

A foreigner buying land makes more "real money" available to the seller. Real money means money that claims real goods. Newly printed domestic money is play money, mainly driving up prices. Foreign money is a new claim on real foreign goods. The goods are transferred through a well-

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oiled balance-of-payments mechanism to meet new demand from new payrolls generated by the seller when he invests. The mechanism clears out all the plus and minus of dealer and banker buying and selling foreign exchange and leaves a net result: the seller gets a claim on real foreign goods.

Thus real capital moves to the nation selling land. The nation trades land for capital, after all is netted out. The effect is the same as a loan, secured by a mortgage on the land. Like other loans it may be used in different ways, and the final effect depends on how it is used. But there is now more real capital at our disposal. The net effect is the effect of that, plus the effect of absentee ownership on how land and capital are used.

Some uses of the imported capital will do more for national income than others. A foreigner buying the land has no influence on that - the issue is in the hands of the seller. A foreigner investing directly in payroll, on the other hand, determines exactly how the new capital is used. If one believes that such use is superior, then it is comforting to have the foreigner do it directly, for the domestic land seller might import machinery instead. But it could also be the other way around, so this is no general fault of foreign land purchase.

Some uses of land do more for national income than others. A foreign cartel buying a large industrial site simply to hold it from competition or for nebulous future expansion removes the land from the national economy as effectively as though by conquest. Yet the capital is still transferred and goes to other domestic uses. Here, however, underuse of land may offset the benefit of capital transfer by forcing capital to be wasted in added infrastructure required to bypass the idle land. Such infrastructure is highly capital-intensive, with a low job-coefficient per dollar of capital over time.1/ But again it could be the other way around, the foreign buyer converting waste land into a hive of service and industry like base metal into gold. The issue is one of land use, not foreign purchase.

Foreigners bidding for land do help push up the price. Robert Solo has written on how this discourages domestic saving and capital formation. The reason is that land value substitutes for other assets in the holdings of individuals, and reduces their need to create real capital in order to have assets.2/ In addition the dynamic rise of values during

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1/ This concept is developed and given precision in Mason Gaffney, "Full Employment with Limited Land & Capital", in Arthur Lynn, Jr. (ed.), Property Taxation, Land Use and Public Policy (Madison University of Wisconsin Press, 1976) pp. 99-166; and in Mason Gaffney, "Full Employment and the Environment:, in George Rohrlich (ed.), Environmental Management (Cambridge: Ballinger Press, 1976).

2/ Robert Solo, "The Accumulation of Wealth in the Form of Land-ownership in Underdeveloped Areas," Land Economics, 1955, pp. 156-60.

the transition to higher levels is current income. Most current income is normally consumed, reducing saving.

Higher land prices resulting from foreign demand do not mean that land is worth more to the nation (except as an exportable commodity, a limited concept). Rather, they mean the same land is capitalized at a lower rate, raising the price. This is a transfer of wealth within the nation from non-owners to owners. There is no net gain of national well-being, and probably a loss if we accept the idea that added wealth means less to those who have than those who have not.

In any event there is no net gain, but there will appear to be one in an inventory of national wealth because the gain shows and the loss does not. To be sure, an inventory of national wealth will be deflated by a price index; but note well that land values do not appear, or are not adequately weighted, in most commonly used price indices. Thus the loss of young people's ability to buy land to get started in business and home building is underweighted, even though it is an extremely weighty problem for them and society.

It is evident that in answering "No, but...." to the opening question, the "but" is as important as the "no". We proceed to but these buts.

The Advantages of Foreign Land Purchase

Capital Transfer

The foreign buyer transfers capital to the selling nation in the present time of capital shortage and crying needs. A measure of the value of capital to a nation is had by noting that the volume of throughput in a business is the product of its capital times turnover. Likewise the national product is the national capital times turnover. Of course we can (and should) speed up turnover of that Great Revolving Fund, the nation's capital. But it also helps to increase the Fund itself.

Stability of Transfer

Foreign capital in the form of "hot money" is a nervous and uncertain addition to national wealth. A nation that lends long, like the United States, and then borrows back short becomes vulnerable to capital flights, which it must guard against at some cost. Foreign land purchase is over at the other extreme from hot money and minimizes this problem.

International Specialization

If we accept the idea that people and nations should specialize in what they do best, and if we ignore whether land is different, then foreigners with overflowing capital are better suited than needy citizens to finance land titles and carry the holding costs, and should do it. They simply have a comparative advantage in the function of holding land. We accept domestic specialization of this kind, so why not international?

This raises the interesting question of what kind of function is being performed by absentee land buyers. The individual landlord relieves the individual tenant of a financing burden, but beware the fallacy of composition as we move from the parts to the whole. What do landlords collectively do for tenants collectively? They bid up land prices beyond their reach, without adding to the supply of land. What would happen in their absence? Land prices would fall until tenants became owner-operators.

Likewise, excluding foreign owners would serve mainly to facilitate resident-owner-occupancy of land by citizens. It seems there is no meaningful gain of international specialization when absentees hold land. The basic transfer of capital to the receiving nation is the gain. Anything beyond that is a double-counting. Absentee ownership is in fact a frictional cost that offsets part of the gain.

Foreign Hostage

In a world of imperfect competition, vertical integration, state trading, exchange controls and cartels it is useful when foreigners have a stake in your nation's welfare. When Japanese nationals own Hawaiian hotels catering to Japanese tourists, the chances are better that Japanese tourists will be allocated foreign exchange when Japanese authorities ration it. If Saudi Arabia owned a chain of gasoline stations in the United States it would be disposed to guarantee supplies of crude -- indeed, such an offer was made in the last years of King Faisal.

Those of a nation's citizens who invest abroad are among its most influential, and are often disposed to use their power at home to turn their government's policies in favor of the haven where their treasure is stored. The potential advantages for the host country are obvious. The price may be foreign domination, but this danger is minimized when the host country is larger, and is a net international creditor.

Ideological Gains in World Debates

In the Marx-Lenin ideology, capitalistic imperialism results from oversaving in the metropolitan nation, leading to a struggle for foreign outlets to receive surplus goods and capital. The image has been created of capitalist centers always long on capital and desperate to dispose of it. United States tax favors stimulating offshore investment, and a host of allied policies have done much to reinforce and appear to confirm this tenet of ideology around the world, resulting in foreign nations' regarding United States capital with an excess of contempt, economically, and of fear politically. This whole image and its dependent ideological apparatus is refuted and shattered by the spectacle of a dominant capitalist nation acknowledging its need to import foreign capital. The result would be more respectful treatment of United States investors by foreign host nations, in thought, in word, and in deed.

By the same token, for a net creditor nation to reject foreign investors

would be glaringly inconsistent with its major national intent and posture, inviting both ridicule and retaliation. The nation must welcome foreign money to legitimize its own actions. It has much more to lose than gain by a world spiral of hostility to foreign investors.

Disintermediation

Foreign land purchase is direct investment that transfers capital without its necessarily going through financial intermediaries. Some of it does anyway, to be sure, to secure needed advisory and other services. The gain is that those not needing the services can avoid buying them. This spares the institutions the real costs of providing the unwanted services, for a net social gain.

This brings foreign management directly into the host country, either in person or indirectly in the sense that they devote time and talent to managing business here. There are several advantages from that.

One is at the local fiscal level. Industry usually generates net fiscal gains to cities, while residences do the opposite. An industry located here but managed there, in part, means added tax base without commensurate added costs, especially for schools. What this means for local jobs is something else, to be considered later. The nation's income tax base, too, is reduced, because foreign headquarters personnel are not taxed in the host country even though the company's tax liability is reduced by its being charged, maybe overcharged for management services from the home office. Thus profit is shifted upstairs out of the host country. Regardless, the locality of situs may reap a gain.

Two, more substantial, is that foreign management may interlope and invade local cartels and restricted markets. Outsiders are less likely to be members of local clubs and networks that restrain trade and competition. When new they have less to lose and more to gain by breaking things up. Even in the absence of actual conspiracies restraining trade there is always the implicit conspiracy of the quiet life by mutual tacit consent. Foreigners introduce new ideas and techniques and products. Equally important they may introduce habitual winners to the new humiliation of coming in second, just as they do in Olympic athletic events, and inspire more effort. There is a bad side to their relative freedom from local social controls, treated later, but there is this good side.

Obviating Police Costs

Foreign land purchase obviates the high police costs of trying to prevent it. Even defining it poses mind-bending riddles. When a national moves abroad, is he now a foreign owner? What arbitrary rule should we use to say when he must sell out, and why is one rule better than another? What if a foreigner buys shares in a native corporation holding land? At what point does a multi-national corporation chartered at home become an alien, as its shares sell around the world, its ships carry Panamanian registry, and its assets are everywhere? What about straw owners and front men,

street names and blind trusts? What about land contracts, who is the true owner? What about estates? A passing acquaintance with the problem of the United States Land Office trying to enforce residence requirements under the Homestead Act; and of the United States Bureau of Reclamation trying to enforce its anti-speculation 160-acre law should serve to alert us to the high police cost, and the low success ratio attending efforts to exclude wealthy buyers from choice markets.

There are useful spin-offs, to be sure. The Bureau has gathered interesting data on the high concentration of ownership its policies failed to counteract, and if these figures were distributed and publicized beyond the present narrow circle of specialized researchers they could be of some public benefit. Information about who owns how much of the nation's land would be a major input into current policy debates, for example on the incidence of property taxation. However this information is important enough to gather and publish for its own sake, and seems too indirect a benefit to be a major rationale for discriminating against alien landowners.

The Disadvantages of Foreign Land Purchase

Less Intensive Use

Historical Record

There are several studies of absentee landownership. Perhaps the most thorough was in the United States Census of Agriculture for 1900. That this was so long ago testifies glowingly to the need for more current information, for surely the topic is of greater national importance than details about personal plumbing and equally consequential matters actually recorded currently. Meantime the findings of the 1900 study are worth citing because they show such a systematic pattern. Size of farm increased systematically with the distance between owner and farm, foreign owners having the largest farms by far.1/ At the same time intensity of use declined with size of farm, a trend still evident today.

Some other studies are cited below.2/

1/ United States Census of Agriculture, 1900, No. 1, Part 1, p. xc.

2/ H.A. Turner, "Absentee Farm Ownership in the United States", Journal of Land and Public Utility Economics 3 (1927), pp. 48-60, at pp. 50-51. E. A. Stokdyk, "Corporation Farms", Kansas State Board of Agriculture, 27th Biennial Report, 1929-30, pp. 77-84, at p. 81. Shaw Livermore, Early American Land Companies (New York: The Commonwealth Fund, 1939). Paul Gates, Frontier Landlords and Pioneer Tenants (Ithaca: Cornell University Press, 1945). Lewis C. Gray, "Land Speculation", in E.R.A. Seligman (ed.) Encyclopedia of the Social Sciences (New York: The Macmillan Co., 1931). Ray Billington, Westward Expansion (New York: The Macmillan Co., 1949). Marshall Harris, Origin of the Land Tenure System in the United States (Ames: The Iowa State College Press, 1953). Adon Poli and Ralph Nielsen, "Non-resident Landlords of Imperial Valley,

A Priori Reasons

There are several a priori grounds for expecting foreign owners of land to use it less intensively. One is the "security" motive often expressed by wealthy foreign buyers hedging their bets and diversifying to guard against political reverses at home. Buyers so motivated seek investments whose value is high relative to the management factor. Management needs vary with volume of production and sales, the products of intensive use.

There was a time when portfolio investments helped meet this need, but that time is largely past due to inflation, as well as tax policies that favor direct over portfolio investment. Common stock ownership is another way, but many shareholders suffer from the inevitable conflict between ownership and management. These prefer to hold their own, and minimize the management input.

It is the surplus yielded by land that attracts remote investors. Marginal increments to intensity by definition yield little surplus above cost. Real estate analysts refer therefore to the top stories of high buildings as increments of "low quality". Labor at the intensive margin likewise is a "low quality" risk to the absentee investor hiring labor with a percentage to a hired manager, while to the owner-operator the marginal labor may be his livelihood, which he regards very highly. The owner-operator therefore probes deeper into the intensive margin of use than the absentee owner.

An aspect of land use where absentee owners are weakest is conservation and maintenance, investments often of "low quality" and where separation of owner and manager is particularly damaging. Accordingly, we find foreign owners strongly attracted to mining, where the surplus is often large, waiting is long and costly, and conservation least involved. Mining is by nature destructive and migratory rather than conserving.

The kind of "conservation" to expect from foreign mine owners is the holding action of a cartel calculated to sustain prices. But this is the opposite of intensive use, just as is mining without adequate labor to finish up a good clean job with attention to details.

Weaker Political Control

Landownership is more political than ownership of other things, for several reasons. Landholders originated in history as vassals of a king who

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California", Bureau of Agricultural Economics, United States Department of Agriculture, Berkeley: 1942 (mimeographed). The Lumber Industry, United States Bureau of Corporations, Department of Commerce and Labor, Parts 1-4, (Washington: United States Government Printing Office, 1913). Benjamin Hibbard, A History of the Public Land Policies (New York: The Macmillan Co., 1924), Chapter 12.

delegated to them some of his sovereign powers. If history weren't enough, the very nature of an owner's dominion over part of the national estate is an expression of territorial power, the same power the nation claims to exclude the world. Something of national sovereignty is lost, therefore, when aliens join the ranks of landholders. The "king's vassals" serve two masters.

The United States "Trading with the Enemy" act is an extension of sovereignty, whose invasion of sovereignty has been widely recognized. Imagine having much of our land held and administered by people subject and responsive to foreign laws, yet invested by our laws with privileges and power denied to landless citizens. The United States, again, regularly uses foreign offices of home-based firms as cover for intelligence agents. The United States has sometimes sent the Marines to protect the rights of its citizens holding land abroad, and the occasional deed is the continual threat. The wide acceptance of the idea that national defense is a "public good" from which all benefit equally betrays a general unawareness of how much military and diplomatic effort is dedicated to enhancing the position of citizens holding interests in land offshore.1/

Foreign landholdings have even been used for troop staging. Landholders are subject to the sovereign police power, yet larger landholdings are less subject to it, in fact, than small. They often have their own police.

Another origin of landownership is foreign conquest. Many vestigial aspects of the common law make landholders higher-class citizens than the landless. One is standing in court. To sue in an environmental case, until very recently only landowners were considered to have standing in court, even though they might be absentees whose lessees' persons are actually on the line. Property qualifications for the vote have been largely removed, yet in some special improvement districts only landowners can vote, even though these districts have been borrowed the sovereign power of taxation. Many important local details of administering farm price support laws and allocation of quotas have been delegated to committees of local landowners. Tax exemption granted to churches goes to their real estate, not clergymens' incomes, and churches renting their premises do not benefit.

Land income is taxed at much lower effective rates than wage and salary income under federal and state tax laws. Some loopholes are so gross as to constitute negative tax rates.2/ Foreign land purchase raises

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1/ The writer has documented this theme in "The Benefits of Military Spending", unpublished manuscript, 1972, pp. 1-89.

2/ The writer has laid out the details in "The Treatment of Land Income", Hearings on Economic Analysis and the Efficiency of Government, United States Congress, Joint Economic Committee, 1969, Part 2, pp. 405-15.

the question whether we want the income of aliens operating in the nation treated more favorably than the income of citizens.

A good deal of land value is a political value. Alfred Marshall, the definitive Victorian economist, called it the "public value of land" in reference to its political sources. Government establishes a sovereign claim over territory initially by driving away rivals and enemies, and continues keeping them at bay. It parcels out land to individuals, and all claims of title hark back to some originating sovereign whose successor is our present sovereign government. It provides police to enforce the tenures so granted - imagine collecting rent in Harlem without them - and lets larger landholders have their own police.

Government finances or regulates site-specific public works that make and break land values. Land values are political products in substantial part. Accordingly, landholders generally take an active interest in politics and wield influence out of proportion to their numbers.

Local government, particularly, is responsive to landholders who often view it as their own "cooperative", a kind of business whose main function is to serve them. That is implied in the common slogan "Property should pay for services to property, not to people", a modern expression of the contract theory of the state.1/ Here, residence and nativity count for little; property for much. This leaves central government to serve people from taxes on people, but not until the central revenues derived from taxing people are shared with local governments to help serve property and relieve its tax burdens.

Local governments then enjoy a delegation of the sovereign police power, control over zoning, which they use largely to exclude citizens of little wealth. Thus an alien landowner is invested indirectly with delegated sovereign powers used to keep landless citizens away from choice lands.

As land values rise, in part from such political acts, landholders receive an "unearned increment". Economists have identified such income as serving little useful economic function. Private enjoyment of it is easier to defend on political grounds, and has been. Landholders are a political caste who provide needed social and public leadership. The Founding Fathers, the Virginia dynasty, the English "squirearchy" and the German Junkers all seem to provide successful examples; the French and Russian aristocracies less so, along with the padrones of Latin America and zamindars of India. W.J. Ashley, Alexis de Tocqueville, Christopher Dawson, and many other social commentators have rationalized landowner leadership in this way.

1/ H.D. Simpson, "Historical Development of the Property Tax from the Legal Viewpoint", American Economic Review (September 1939) pp. 457-67, at p. 462.

There is doubtless much to it. The rationale is lost, however, when aliens buy in and replace native owners. Then ownership loses everything but its purely commercial character, and as such it lacks enough function to justify receipt of unearned income. Society is pluralistic, held together by many value systems. We can live with anomalies, up to a point. Alien assumption of landowner prerogatives whose origins were premised on compensating public service and leadership pushes us right to the limit.

Weaker Social Control

Foreign owners are less concerned with local external economies and diseconomies, both technological and pecuniary, resulting from their management. Thus a branch plant controlled abroad may be put on and off standby, imposing all the costs of instability on the host economy in order to stabilize the home economy. When output is prorated the branch plant may get less than its share, due to political and economic pressure exerted at home. Owners will transfer both jobs and profits to the jurisdiction where they most need political support.

As to the physical environment, the absentee owner is obviously less affected, aware and concerned than the resident owner. As to the social and civic environment, the absentee is absent and contributes little, as may be observed in slum neighborhoods. Jon Udell has impressively demonstrated the dereliction of absentee owners and branch plant managers in local charities, philanthropies and other civic good works.1/ The demonstration effect of such dereliction on the character of young people growing up is simply incalculable.

Monopoly Control of Public Lands

Managers of public lands sometimes are forced to deal with one buyer whose private land holds a strategic spot. When the buyer becomes an alien the interesting question arises whether public policy is served by letting timber, for example, be sold on sub-competitive terms. Public managers have at times evinced a weakness for favoring their clients. In the Tongass National Forest of Alaska, for example, the monopsony buyers are now Japanese.2/

Violation of Native Mores

Alien landowners intrude on a local scene in a dominant social role. They will have different ideas about race relations. They know different customs about toleration of trespass by hunters, fishers and sojourners. They deal differently with employees and tenants, both relations

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1/ Jon Udell, Social and Economic Consequences of the Merger Movement in Wisconsin (Madison: Bureau of Business Research, 1969).

2/ United States Department of Commerce National Technical Information Service, Federal Land Laws and Policies in Alaska, Code PB 195-295-LK, Volume 2, Chapter III, "Timber", 1974.

being subject to extensive social control by custom and tradition. They have different ideas about the responsibilities as between neighbors, the proper public face of private property, and care of the environment. Landownership has a sociological, as well as a political and economic aspect, and alien intrusion is bound to be an irritant.

Loss of Tax Base

The law distinguishes taxes *in rem*, on things, and *in personam*, on persons. Real estate taxes are *in rem*, and express the sovereign's underlying ownership of land in a nation. The thing, not the owner, is liable to seizure and forfeit for non-payment. The personal circumstances of the owner, and his location and citizenship, are immaterial. Taxes *in rem* are not lost when aliens buy.

Taxes *in personam* are something else. An alien owner may shift taxable profit to his home jurisdiction by adjusting transfer prices internal to his firm or corporation, and by allocating overhead and other invisible service costs to the land in the host country.

At the same time, it is true, the alien owner imposes no personal service costs on the host nation, like educating his children. However if large holdings are involved per owner, this gain is small next to the potential losses. We will see that foreign holdings do average larger than native ones.

There are other taxes that miss alien owners. Consumption and death taxes are obvious examples, and payroll taxes on home-office management staff, whose services are imported without their bodies.

The foreign buyer seeking "security" primarily will avoid marginal increments of land improvement in the "low-quality" stage of intensification where there is little surplus above real costs. But all these increments would have been taxable, as would have been the added gross activity they could shelter. Land used less intensively yields less taxes.

But what then happens to the net inflow of foreign capital from the land purchase? Much of it leaks now into public infrastructure, tax free. Even disregarding taxes there is a tradition of using low interest rates for planning, sizing, timing and extending public works. The net result is triply inferior: the capital yields no taxes; its marginal productivity is below par; and its turnover is slow, reducing all the payroll and taxable activity associated with recovering and reinvesting capital.

Long Term Drains

When a foreigner buys land there is, we have seen, a real capital transfer here. But then begin the return flows of income. If he buys at a capitalization rate of 10%, or "ten years' purchase", in ten years the return outflows equal the original inflow, and then go on forever.

On the plus side, we keep the capital transfer forever, too, and capital can yield real income. Goods are transitory, unlike land, but "Capital is kept in existence from age to age, not by preservation but by continual reproduction".1/ Each turnover poses a risk of loss, it is true, but added returns on successful ventures yield risk premia to compensate. The foreign exchange "problem" solves itself, too. Added production from the new capital increases our exports and reduces our imports to cover the rent outflow.

Yet we observe nations badly exploited by foreign landholders. This occurs when they sell too cheap and handle their new capital badly. It is an old familiar story when non-commercial cultures with high time-preference and short time-horizons come in contact with sharp lenders laden with money, equipped with guile, and backed by their nation's armed forces. Aramco, for example, originated in 1933 with a capital of $100,000.2/ In 1956 it netted $280 millions after all taxes and royalties.3/ Few others have matched that success story, but it suggests the possibilities.

A powerful nation of modern, businesslike people has less to fear in this regard. We do not trifle away foreign loans on big funerals and weddings like the Indian peasants who fall in the grip of usurious money-lenders. We will not be invaded by Swiss or Belgian Marines. We will not sell Manhattan Island for beads and trinkets.

We do have our own sacred cows, however, that can get us into deep trouble. We do not waste capital in the child-like ways of primitive peoples. We waste it in our own mature, sophisticated ways. We slush precious capital into highways well beyond our needs. We pad the Pentagon budget with work-relief items and put our hope in their "ripple effects". We carry an increment of water supply to southern California at many times the necessary capital cost. One could go on - and on - and on. The waste does, every day.

There is a rationale that the social rate of time-preference is lower than the private rate. What that means in practise is that governmental agencies may invest capital at extremely low productivity, especially

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1/ John Stuart Mill, Principles of Political Economy, Book I, Chapter 5, Paragraph 6 (Boston: Lee and Shepard, 1872) p. 47.

2/ "The Great Oil Deals", Fortune, May 1947, p. 175, cited in Raymond A. Mikesell and Hollis B. Chenery, Arabian Oil (Chapel Hill: University of NOrth Carolina Press, 1949), pp. 55-56, note 31.

3/ Testimony of F.A. Davies, Emergency Oil Lift and Related Oil Problems, Joint Hearing before Subcommittees of the Committee on Interior and Insular Affairs, United States Senate, 85th Congress, 1st Session (Washington 1957) Part 2, p. 1469, cited in Robert Engler, The Politics of Oil, (Chicago: The University of Chicago Press, 1961), p. 224.

in public works of long life and slow results. Now if the foreigner buys our land for a 10% return, and we invest marginal public capital for a 2% return, we are the losers and we are in trouble. If we invest the public capital in ways to enhance the income of the land he has bought, we compound the error. If now we turn and blame the foreigner for our own mistakes we are childlike, irresponsible and incorrigible indeed.

There is also the question of secondary effects. If the primary effects are negative, so are the net secondary effects. When foreign capital flows in it finances local income payments, and these in turn create new opportunities in the area impacted. Some of the new opportunities yield net surpluses over cost, or rents, and there are net gains to the receiving nation, (unless the benefitting lands are foreign-owned).

When rents flow back, however, the secondary gains go with them. Swiss residents living off American rents increase the demand for homesites in Switzerland and for ski resorts and commercial land, adding to Swiss rents, and detracting from American. Meantime the American condition depends on what Americans did with their earlier secondary gains. If these were simply consumed away, there is another net loss over time.

Concentration of Ownership

Absentee owners average larger than resident owners of land. "While the portfolio foreign investments of the 1920's were held by a large number of individuals and corporations, direct investments have always been heavily concentrated in the hands of relatively few American companies with foreign branches and subsidiaries".1/ There is an overwhelming weight of evidence supporting this generalization in every field of direct investment.2/ Opening the door to foreign investors therefore opens a field dominated by the largest firms and wealthiest individuals.

Domestic Institutions and the Balance of Advantage

When foreigners want to buy our land there are great disadvantages in

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1/ The American Enterprise Association, Inc., American Private Enterprise, Foreign Economic Development, and the Aid Programs, Special Committee to Study the Foreign Aid Program, United States Senate. (Washington: United States Government Printing Office, 1957) p. 2.

2/ Raymond F. Mikesell, Promoting United States Private Investment Abroad (Washington: National Planning Association, 1957) p. 23. United States Department of Commerce, United States Business Investments in Foreign Countries, (Washington: United States Government Printing Office, 1960) p. 144. International Financial News Survey, Volume 19, No. 9 (March 10, 1967), pp. 73-74. Christopher Layton, Trans-Atlantic Investment (Boulogne-sur-Seine, France: 1966), p. 18.

trying to exclude them, and great disadvantages in admitting them. What to do? The answer lies in finding filters that will secure the good effects while sparing us the bad.

The problem arises in part from our having let the rights of property rise in value relative to the rights of citizenship as such, the latter being what a landless orphan - which is what many a slum youth is - might come into as he matures. What he comes into now is a world where services to people are increasingly financed by taxes on people's wages and consumption, and services to property are partly so financed as well; a world where payroll taxes on the young will rise to cover pensions for the old; a world where land for new homes and businesses is beyond his reach. Unless he is Ph.D. material his better bargains are a car, a TV, a welfare card and a gun. Only the gun promises to enrich him enough to compete with aliens for his native land. Even the Ph.D. may not get him a job.

To counteract such problems, a useful filter is the property tax. Property taxes do not exclude foreign buyers or require any special policing. They do however limit what is available to buy by reserving a piece in the "bundle of rights" to be used for services to citizens and residents. The property tax piece in the bundle of rights is not transferred with the fee simple title. A community that taxes property receives the benefit of foreign ownership without so much damage. The higher the tax rate, the larger the reservation of community rights.

The property tax turns land to the greater benefit of our "landless orphan" citizen in two ways beyond simply raising money. Most taxes are activity-based: they shoot anything that moves and spare what doesn't. Property taxes are the opposite, they are passivity-based, and so apply leverage to property. The incentive effects are positive. Land-based taxes, particularly, induce owners to turn land to heavy use to raise tax money. Very intensive use of farm land in the Wright Act Irrigation Districts of California has clearly developed as a response to heavy land taxes levied to finance water supplies and break up large landholdings.1/ Use of land means service to consumers and jobs for workers. Thus the landless citizen benefits triply, as a taxpayer, a consumer, and a worker.

The land, by the same token, is made less attractive to those foreigners who seek a quietly secure, appreciating asset they can hold at a distance without much management input. It is the surplus in property that attracts investors. Property taxes cut right at the heart of the surplus, without reducing a bit the return on "low-quality" intensifying increments of labor. The comparative advantage of the intensive user rises. The filer is doing its job.

1/ Albert T. Henley, "Land Value Taxation by California Irrigation Districts", in Arthur P. Becker (ed.) Land and Building Taxes (Madison: University of Wisconsin Press, 1969) pp. 137-46.

Property taxation filters out foreign buyers who, in seeking security without offering enterprise, would hold back our land from full economic use, curtailing service to consumers and jobs for labor. That is more true of the land element of the tax. The building tax adds to the cost of holding capital and screens out marginal "low-quality" investment increments. But neither element is a tax that "shoots anything that moves". Both elements spare motion and shoot torpidity, because the taxable event on which they are based is not action but the passage of time.

By discouraging absentee ownership, property taxes preclude impairment of sovereignty. In addition, property taxes are an annual reminder and assertion of sovereignty over land, of psychological as well as financial effect. They require inspection and appraisal. They tend to break up large holdings, increasing interdependency and exchange which pass through public rights-of-way and markets to be observed and policed. They are no answer to all foreign arrogations, but they forestall developing weakness that would encourage violations of sovereignty.

By discouraging passive absentee owners, property taxes, especially their land element, bring owners nearer to their land, making them more aware of its environment and their civic duties. By subjecting the owner more to local social controls we do raise the danger of subjecting him to local networks in restraint of trade, it is true. On the other hand the more intensive use of land is ipso facto a freeing of restraint, necessarily leading to greater volume, lower prices and greater job opportunities. The application of labor to property tends to be regressive - larger holdings are much less heavily manned. Peter Dorner, Don Kanel,1/ John Riew,2/ Morton Paglin,3/ Albert Berry,4/ and others have documented the point beyond much doubt. Property taxes therefore have always tended to break up large concentrations of property, fostering subdivision, intensification, equal distribution and competition.

Another advantage is the in rem character of property taxes. They fall due each year on aliens as well as residents, regardless of address. They are unavoidable by shifting profits abroad, by consuming, working, or dying abroad. They require no international agreements or bargains,

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1/ Peter Dorner and Don Kanel, "The Economic Case for Land Reform", in Peter Dorner (ed.) Land Reform in Latin America (Madison: Land Economics Monograph Series No. 3, 1971) pp. 39-56.

2/ John Riew, "Assigning Collection of a Statewide Uniform Rate Land Tax", in Richard Lindholm (ed.) Property Taxation and the Finance of Education, (Madison: University of Wisconsin Press, 1974).

3/ Morton Paglin, "Surplus Agricultural Labor and Development", American Economic Review, September 1965, pp. 815-33.

4/ Albert Berry, "Presumptive Income Tax on Agricultural Land", National Tax Journal, June, 1972, pp. 169-81.

treaties or concessions. No one needs to hunt down the absent owner - he pays or he forfeits his real estate.

Another advantage is cutting down our need of foreign capital by reducing the required capital coefficients of each job. Taxes on capital make it cost more relative to labor, and discourage the substitution of capital for labor. I count this as a lesser advantage. The greater saving is the saving of infrastructure capital achieved when land taxation raises the density of settlement and land use. This is why California Irrigation Districts taxed land, and their experience is symbolic of what the whole economy needs: heavier use of land under the ditch; fewer ditches.

Another set of domestic institutions needing review is the set of favors to Americans investing abroad. It is altogether anomalous to subsidize capital export, as the nation does, and then sell the homeland to foreigners. America outre-mer has a GNP well over $100 billions, making it the third or fourth largest economy in the world.1/ It is not a labor-intensive GNP, but capital and resource-intensive. There is there a prodigious fund of real wealth that might be summoned home simply by repealing the various special privileges it enjoys, like the foreign tax credit and deferred taxation of unrepatriated income.2/ If native and alien owners both stayed closer to their own homes the net change would be to reduce absentee ownership with its heavy personal and social costs.

In summary, we have made these points. Foreign purchase of domestic land effects an international capital transfer, just as though the foreigner loaned us money or shipped goods here. There are several advantages to the host nation. It gives foreign nations a stake in our welfare. It causes foreign nations to treat our overseas capital more respectfully. It may bypass unneeded financial middlemen. It may bring in creative new management. And it obviates the high costs of any effort to present it.

There are also disadvantages to the host. Absentee owners use land less productively, necessitating some waste of the new capital in stretched-out transportation and utility lines and other infrastructure costs that increase as functions of space and distance. Landholding is politically sensitive and holders are powerful, so alien ownership threatens native sovereignty. Absentee owners are less useful civic leaders, less sensitive to the local environment, physical and social,

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1/ Leo Model, "The Politics of Foreign Investment", Foreign Affairs, July, 1967, pp. 640-41.

2/ Lawrence B. Krause and Kenneth W. Dam, Federal Tax Treatment of Foreign Income (Washington: The Brookings Institution, 1964). Peggy Brewer Richman, Taxation of Foreign Investment Income (Baltimore: The Johns Hopkins University Press, 1963). Stanley Surrey, Pathways to Tax Reform (Cambridge: Harvard University Press, 1973) pp. 183-84.

political and economic. Land income receives preferential treatment under the income tax. Much of it is unearned so there is no gain in taxing foreign owners more favorably than citizen labor. Foreign owners may secure monopsony control over use of the public domain. Foreign owners may violate local custom, dealing from strength. Foreign owners may avoid most kinds of taxes, operating from privileged sanctuaries. Foreign purchase tends to increase concentration of ownership. Finally, the host nation may waste its new capital in low-yield investments while paying income to aliens at market rates, falling into the grip of the money lender.

The balance of advantage depends on domestic institutions. The writer suggests we make heavier use of property taxation, particularly the land element, in order to filter out aliens who would scorch our earth by underutilization, and filter in those who would activate land, serve consumers and hire workers. He suggests the rights of citizenship take priority over the rights of property, that property be taxed to provide services to people rather than the reverse. He suggests we stop wasting capital in public works of low productivity which make us depend on foreign capital; and that we summon home a portion of the native capital now enjoying tax shelter offshore. These measures would constitute an effective response to the challenge of foreigners who would buy our land.

FOREIGN OWNERSHIP AND CONTROL OF U.S. TIMBERLAND AND FORESTRY INDUSTRY

Lloyd C. Irland*

The United States, compared to most other industrial nations, has abundant forest resources. It is also the world's largest single market for wood products; consequently, foreign investors have invested in the United States to obtain wood fiber supplies and to serve the U.S. market. A number of foreign firms now own nearly 2 million acres of U.S. forest land and have substantial direct and portfolio investments in U.S. facilities and U.S. firms. Purchases of U.S. forest land for strictly speculative purposes are apparently unimportant to date.

The scope and likely effects of foreign investment in the U.S. forest sector are examined. First, the U.S. forest resource position is summarized; next, forest land is characterized as an investment medium, including a review of various motives for ownership; finally, the effects of foreign ownership are examined, including a brief case study of Alaska. Data needs are noted.

For perspective on foreign ownership of U.S. timberland, it is useful to note the forest acreage abroad controlled by U.S. companies. A survey in 1969-70 showed that the 30 largest U.S. forest products firms owned or controlled about 111 million acres worldwide.[1] Of this, about 58 million acres in Canada and about 5.3 million acres in other foreign countries were owned or controlled by U.S. firms. For comparison, the total forest industry ownership in the United States is estimated at 67 million acres in 1970.[2] Also, U.S. control of processing capacity is substantial in Canada and in several Latin American nations.[3]

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1/Gordon A. Enk, A Description and Analysis for Strategic and Land-use Decisionmaking by Large Corporations in the Forest Products Industry. Unpub. Ph.D. diss., Yale Univ. 1974. ch. 3.

2/U.S.D.A. Forest Service. Outlook for Timber in the U.S. For. Res. Rept. 19, 1973. p. 11.

3/H. M. Gregersen and A. Contreras. U.S. Investment in the Forest-Based Sector in Latin America. Baltimore: Johns Hopkins. 1975. pp. 33-34.

U.S. Forest Resource Position

A review of the U.S. forest resource position will provide perspective on the importance of foreign investment.[1]

The United States contains about 750 million acres of forested land, about one third of its land area. Only two-thirds of the forested land (500 million acres) is commercial forest--land suitable and available for timber production. Some fraction of this is undoubtedly economically unproductive by reason of limited access and/or low growth rates. While forest area has grown through farmland abandonment, experts expect the forest land base to decline in the future.

Standing timber volumes have been increasing since about 1950. Today, U.S. forests grow about 19 billion cubic feet of timber per year, after allowing for an additional 4.5 billion cubic feet of mortality. In contrast, removals are about 14 billion cubic feet. In most regions, inventories are projected to continue rising for several decades. The principal exceptions are areas in the West where old-growth timber is still being liquidated and a few areas in the South that are under heavy pressure from pulpwood cutting and agricultural land clearing.

U.S. timber supplies have increased over the past two decades--sufficiently so that most major wood products were available at steady or declining real prices until the inflationary period after 1971.[2] Since 1971, a major housing boom (which collapsed in 1973) and a general inflation in world raw material markets have kept timber and wood product prices relatively high.

The United States is the world's largest producer and consumer of pulpwood and paper products and the second largest producer of softwood lumber.[3] It is a substantial importer of both of these products, mostly from Canada. The United States is involved in the hardwood lumber and log trade only in a marginal way but is a major importer of hardwood plywood and veneer. It is a substantial exporter of kraft paperboard and of raw logs and wood chips. The U.S. export trade in logs and chips emerged through the 1960's as Japan, the major customer, ex-

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1/Data cited generally obtained from USDA Forest Service, Outlook for Timber, 1973; Report, President's Advisory Panel on Timber and the Environment, 1973; USDA Forest Service, The Nation's Renewable Resources--Assessment 1975 (Draft); L. C. Irland, Is Timber Scarce?...Yale School of Forestry & Env. Stud. Bull, 83, 1974.

2/See Irland, Is Timber Scarce?, ch. 3. and J. A. Guthrie, The Economics of Pulp and Paper, Washington State U. Press, 1972.

3/See I. I. Holland, Foreign Trade in Timber Products, In Report, President's Advisory Panel on Timber and the Environment. GPO, 1973; A. E. Gamache, Influence of U.S. Trade Policy on Forest Products Trade. Amer. J. Agr. Econ. Dec. 1973.

panded its wood imports.[1] This trade is now heavily based on liquidation of old growth timber in the Pacific Northwest.

Forest Land as an Investment

As an investment, forest land can be characterized in terms of its own features, and in terms of investor motivations.

Characteristics of Forest Land

Forest land has both favorable and unfavorable investment characteristics.

Favorable Characteristics

Forest land is available in relatively large tracts. Even at relatively low prices per acre, then, forest land can provide an outlet for sizable investments. This situation is changing, however. Forest industry firms and others are rapidly buying up the remaining available large tracts. These tracts are being slated for subdivision or development or for timbergrowing. Major U.S. firms now commonly acquire land through outright purchase of going concerns--mills, land, and timber.

Significant recent inflation in timberland prices has undoubtedly affected investors' attitudes. Important factors have been the demand for large, low-priced tracts, the growing investment demand for land generally, and the Interstate Highway system, which makes remote areas more accessible than before.[2] The low level of forest land prices in remote rural areas--ranging from as low as $30 per acre in large tracts in the 1950's--has made for spectacular percentage increases. Long term capital appreciation potential, however, remains good for well-chosen tracts.

The rising price of stumpage has also affected timberland values. In current dollars, softwood sawtimber prices on western public lands rose threefold from 1970 (a poor year in the lumber industry) to 1973-74. Elsewhere, increases of 30 to 60% occurred. Hardwood sawtimber rose from 30 to 60% depending on species and region, while pulpwood rose from 20 to 50% or more.[3] In real dollars, increases in some re-

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1/See, for overview, David R. Darr, Softwood log exports...USDA Forest Service, PNW Forest and Range Exp. Sta., Res. Paper PNW-200 (1975).

2/Studies in specific areas document these general observations: A. Pleasonton, Trends in Forest Land Values. For. Prod. J. Jan. 1974; Frank Harris Armstrong, Valuation of Amenity Forests, The Consultant, Jan. 1974; R. O. Sinclair, Trends in Rural Land Prices in Vermont, Vermont Agr. Exp. Sta. Bull, 659, 1969; O. P. Wallace, Some Factors Affecting Forest Land Pricing in New Hampshire. New Hampshire Agr. Exp. Sta. Res. Rept. 28, 1973.

3/For specifics, see R. B. Phelps and D. Hair, Demand and Price Situation for Forest Products, 1973-74. USDA Forest Service. Misc. Publ. 1292, 1974.

gions were slight, but the overall impression is one of rising timber values.

In some areas, despite the recent rise in prices, forest land can be purchased for less than the value of the timber alone. Some rural land markets apparently fail to recognize timber values. In other areas, prices are based on timber liquidation value with bare land values at $10 or so per acre and no recognition of growth potential. These opportunities can still be found by shrewd land buyers.

In areas where small rural lots are in demand, the market for forest land shows enormous wholesale-retail price spreads. Land obtained for $100 to $500 per acre can be sold for $5,000 per acre and more depending on improvements, nearby amenities, distance to cities, and lot size. Until recently financing was abundant for such operations. Today, with a number of the nation's largest land sales firms in or near bankruptcy or indicted for fraud, this easy financing will not be available in the foreseeable future. Thus, a significant component of demand for medium-sized forested tracts will probably disappear.

In many states, rural land values have not yet been affected by zoning or other land use controls. Prospective owners face maximum flexibility in making use of their land. In other states, quite extensive controls have been established.

Unfavorable Characteristics

Forest land has a number of characteristics that may detract from its value as an investment medium. Transaction costs may be high. A buyer concerned with timber must obtain a volume estimate before purchase. Selling timber can be costly. In many areas, consulting foresters charge a 10% fee, paid from stumpage, for cruising, marking, advertising, and supervising timber sales. Selling timber is an inherently costly process due to the nonstandardized nature of the commodity and the fragmentation of markets in most regions; however, the availability of these services enables an absentee owner to have his property professionally managed.

Transaction costs in buying and managing timberland are high relative to many financial instruments. But, compared to other forms of real estate such as operating farms or commercial buildings, the costs may not be significantly higher.

In addition, timber markets are highly imperfect in most areas. Spatial monopsony and oligopsony are not uncommon. In most timber markets, the cost of shipping a bulky product limits competition. At times, it may be virtually impossible to sell land or timber due to fluctuations in product markets. This may not be serious for a property under long-term management, but occasional illiquidity does impair flexibility for a buyer interested only in investment potential.

Prices for undeveloped rural land are subject to two major risks because of public policy. More and more states and counties are taking steps to control poorly-planned subdivisions and to restrict various land uses. These restrictions can impair speculative land values. They can also dramatically reduce the liquidity of the market. In addition, many tax jurisdictions are beginning to catch up with high market values. Investors caught by reappraisals may find carrying costs much higher than expected.

An additional risk is the possibility of catastrophic loss of timber to fire, hurricane, insects, or disease. These hazards are virtually uninsurable, and all have caused severe timber losses in local areas in the past. A Weyerhaeuser can own enough land to self-insure, but an individual investor usually cannot. Many investors, however, seem to overemphasize the importance of these risks.

Timberland has two significant financial characteristics. First, for small tracts the cash flow characteristics may be unfavorable, especially for young timber. Interest, property taxes, and administrative costs accumulate rapidly against future timber revenues. If a tract contains merchantable timber, its harvest can provide initial cash flow and help reduce the investment. More importantly, the investor faces the fact that timber itself is difficult to leverage through borrowing. Financial institutions will often lend against the value of land itself, but not against the timber.

Motives for Control of U.S. Timber or Timberland

There are six distinct motives which could be involved in purchases of U.S. timberland or timber by foreigners.

Serve U.S. Market

Several major producers are in the United States to participate in the world's largest forest products market; one which, for many products, continues to grow rapidly. This motive is dominant for Canadian and U.K. investors with manufacturing facilities and portfolio investments here.

Obtain Fiber Supplies

Many nations are critically short of wood fiber. Of these, only Japan has taken steps to control a significant amount of U.S. timber. As noted below, this has been done mostly through contracts and joint ventures, rather than through land ownership. In recent months, Scandinavian firms have written contracts for U.S.-supplied chips, and a few shipments have been made. These nations, major forest products exporters themselves, are reaching allowable cut ceilings but they want to continue to exploit their processing technology. The oil-producing nations obviously lack wood fiber. Whatever plans they may have for

seeking U.S. supplies are not known.

U.S. Policy

Firms that want to obtain raw wood in the United States may be forced by U.S. policy to invest here in order to do so. In Alaska, for example, raw timber cannot be exported, but must be first sawn into cants or chipped. This has probably induced the Japanese to build plants in Alaska that they would have preferred to build in Janan.

Timber Growing

Investors may seek to own U.S. timberland to engage in an ongoing business of growing and selling timber.[1] For many properties such a business would be unattractive to a foreign investor due to the cost of management and the likelihood of an unfavorable cash flow profile. Careful search, however, will reveal properties that can yield favorable returns in a short time. Seeking out such tracts can be difficult for the uninitiated. Still, investors could be attracted by low U.S. land prices and high timber growth rates; but, evidence to date suggests that few foreign investors have been motivated strictly by a desire to earn a profit from growing timber.

Speculative Investment

For a time, forest land was an unattractive choice for the investor seeking speculative appreciation through resale, subdivision, or development; however, a brief survey of knowledgeable individuals produced no significant evidence of foreigners engaged in such activity.[2]

1/See the literature on industrial timberland ownership policy, especially: J. A. Segur, Protecting our Wood Supply. J. Forestry July 1967; Gilligan, Timberland: How Much Should You Own? Pulp & Paper, Dec. 1972 and Jan. 1973.

2/Evidence from a variety of sources, mostly unpublished. The U.S. Forest Service survey of forest landownership in the Northeastern states uncovered only 4 foreign addresses in a sample of 3500 owners (Neal Kingsley, pers. comm.). Canadian citizens are known to own second homes in Washington state and in Vermont; some undoubtedly own lots or recreational tracts as well. Martech Corp. performed a survey of foreign investment in the Northwest for the PNW Regional Commission, tallying direct investments larger than $100,000 including real estate. They found no timberland investments. In New Hampshire, unpublished research under way has uncovered no significant foreign ownership of forest land (Wallace, pers. comm.); a major survey of rural land ownership is just getting under way (Durgan, pers. comm.). In Vermont, Frank Armstrong (pers. comm.) searched all 1968-74 transactions in forest parcels larger than ten acres. He found no significant identifiable foreign investments. Several knowledgeable individuals in the South and Northwest report little activity by foreign buyers in the forest land market. Well-

(The Kuwaiti acquisition in South Carolina seems to be an unusual case.) In the past few years, the rural lot market has stagnated. Opportunities for such investment, then, have been rare. Further, many observers feel that foreign investors are interested primarily in motives other than speculation.

Conversion to Farming

In the Mississippi Delta and in Eastern North Carolina, a small number of foreign investments in farming have been made. Some of these will apparently involve conversion of woodland to farmland. This activity, due to its high capital costs, is probably rare.

These six motives are based on features specific to forest land; but, selected, managed, forest tracts can also be suitable for investors seeking a safe haven for capital that will yield some cash flow. Some future purchases can be expected by investors with such motives.

Scope and Effects of Foreign Investment and Control

This section reviews forms of foreign control over U.S. timberland, summarizes the importance of current known foreign investment, provides a brief case study of Alaska, notes investment in related activities and summarizes potential effects of foreign control.

Forms of Control Over Wood Fiber

Ownership of timberland is only one form of control over wood supplies. There are three principal business relationships that can potentially provide control over wood fiber: direct investments, portfolio investments, and contractual control over timber or wood products.

Direct Investments

Without investing in timberland, an investor can gain control over wood products simply by purchasing wood processing facilities. Many foreign firms have done this (Table 1). Products range from pulp and paper to wood spools. Direct investments are dominated by firms based in Canada, the U.K. and Europe. Their principal strategies appear to be to serve the U.S. market.

A number of direct investments have been made by Japanese firms. These have included joint ventures, long-term financing and direct ownership. These investments, in contrast to European and Canadian ones, are almost

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concealed ownerships using local nominees or trusts could evade attention of these investigators, however. As it happens, it is far from simple to identify the owners of major U.S. corporations. See U.S. Senate, Disclosure of Corporate Ownership, Comm. on Govt. Operations, 93rd Cong. 2nd Sess. S. Doc. 93-67 Mar. 4, 1974.

TABLE 1
FOREIGN FIRMS OWNING, CONTROLLING, OR WITH JOING VENTURES IN U.S. PROCESSING CAPACITY

COUNTRY & FIRM	ACTIVITY
CANADA	
MacMillan Bloedel	Pulp & paper, lumber, plywood, psrticleboard (Pine Hill, Ala.) Furniture (Walpole Woodworkers, Mass.) Paper Converting (12 plsnts nationwide)
Tembech Forest Products	Printing & tissue papers, Nitec Paper Corp. mill at Niagara Falls, New York
Denison Mines	Interest in Fibreboard Corp.
Noranda Mines	Controls Fraser Paper at Madawaska, Maine through Fraser, Ltd. subsidiary. Uses imported pulp.
Abitibi	Newsprint: Augusta, Ga. Through Price, has an interest in Boise Cascade's mill at DeRidder, La. Hardboard and fiberboard: Alpena, Mich., Blountstown, Fla., and Roaring River, N.C. Finishing: Chicago, Ill., and Cucamonga, Cal.
General Woods & Veneers, Ltd.	Swords Veneer & Lumber Co., Rock Island, Ill. Hardwood veneer.
Moore Corp. Lts.	Paper converting, business forma.
Mohawk Industries	Handles
U.K.	
Reed International	Deerfield Specialty Papers, Monroe Bridge, Mass.
Coats Paton Ltd.	Wood spools (John Heathcote Co.)
Bowaters	Newsprint, pulp & paper, lumber. (Tenn. & S. Carolina)
IRELAND	
Smurfit Group	40% interest in Time Industries, (packaging, paperboard, and printing). Owns paperboard mill in Monroe, Mich.
FRANCE	
Cie de St. Goubain Pont-a-Mousson	Equity interest in Cert-n-teed Inc.

(Table 1, Cont.)

NETHERLANDS	Lumber (Timber Products Co. N.C.—shown as hardwood plywood operation Div. of Fitco, Inc. Murphy, N.C.)
GERMANY	
Moehring	Veneer (Atlantic Veneer, N.C.) 140mm' 1/28" basis Beaufort, N.C. Veneer (Vario Veneer, Mo.) (Not shown in directories)
FINLAND	
Pellos Oy	Particleboard & plywood (Pellos Inc., N.C.) (Not in directories) Millsite, lumber and pulp production planned near Hattiesburg, Miss. U.S. subsidisry, Leaf River Paper.
SWEDEN	
n/a	Transamerics Match, Kenner, La.
JAPAN	
Joint Ventures	
Toyo Pulp Co.	With Pack River Lumber Co., to build a pulp mill in the Pacific Northwest
Jujo Paper & Pulp	U.S. psrtner and Mitsui. To build a $28 million bagasse pulp mill (275 tpd) in Hawaii. Weyerhaeuser-Jujo. With Weyerhseuser, to build s newsprint mill at Longview, Wash.
C. Itoh, Ataka, and Marubeni	10-year contract for 200,000 metric tone of bleached kraft pulp, from Georgis-Pacific. To supply, G-P is building a $120 million addition to its Port Hudson, La. mill.
Direct Ownerships	
Alsska Pulp Co.	Controls pulpmill at Sitka, sawmill and logging.
Iwakura-Gumi	Controls South Central Timber Development.
Mitsui	Owns Kodiak Lumber Mills & Logging subsidiary.
Other	
Numerous instances of part or full ownership of chip export terminals and financing of loggers and log exporters.	
Firms Known to Hsve Divested Holdings in U.S.	
Consolidated Bathurst	Sold converting snd tissue plants in 1972.
Enzo-Gutzeit Oy and Oy Tampella	Sold interest in Pineville Kraft, 1974
Equity Enterprises, Ltd. (U.K.)	Sold interest in Firply, Medford, Ore.
Italian interests	Sold controlling interest in Brown Co., owner of 700,000 acres of timberland in New Hampshire and Maine
Alaska Princs Timber Co.	Sold by Japanese owners to Louisiana Pacific and FMC Corp.

Source: Directories, U.S. Dept. of Commerce, trade journals, personal contacts.

exclusively aimed at obtaining raw timber or cants, chips and pulp.

A number of joint ventures between foreign firms and U.S. companies are known. These provide the foreign investor with access to local timber market knowledge, local managerial skill and financing. Most in the news have been announced Japanese joint ventures. Another example is Bowaters' Catawba Newsprint Company, which is 49% owned by the American Newhouse newspaper chain.

Portfolio Investments

Table 1 includes a number of foreign portfolio investments in U.S. wood products firms. The extent of equity control is not always shown in the public record, but most of these have probably not been used to acquire timber or product supplies.

Contractual Control

Perhaps the most flexible and economical means of controlling wood is simply through writing long-term supply agreements. These may take a variety of forms: timber contracts, chip and log contracts and contracts for products.

Timber Contracts--While private landowners are major timber exporters in the Northwest, they prefer to sell logs rather than stumpage; but, foreign buyers can obtain state-owned timber in Washington and Alaska, the only states surveyed for this report. In Alaska, Japanese firms with processing investments there control about 775 MMbf of state timber, mostly on long-term contracts (Table 2). Firms identified as connected with Japanese timber buyers are also active buyers of Washington state timber (Table 3). No regulation bars purchase of federal timber for domestic processing by foreign-controlled firms, but raw logs cut from federal lands may not be exported. In Alaska, Japanese firms control several long-term sales, totaling about 6 billion bf of timber volume (Table 4).

Chip and Log Contracts--Foreign firms have written contracts with U.S. suppliers for chips and logs. Until recently, most such activity has been Japanese; more recently, Scandinavian buyers have been in the market. Little is known about the extent, duration and terms of such contracts, though they are important in the Pacific Northwest.

Contracts for Product--Some American companies have written long-term supply contracts for wood products with Japanese firms. Information on the extent and provisions of these contracts is not available.

Importance of Foreign Investments in U.S. Timberland

The five major foreign owners (Table 5) of U.S. timberland controlled 1.8 million acres in 1975:

TABLE 2. JAPANESE PURCHASERS OF ALASKA STATE TIMBER.

COMPANY	VOLUME, SPECIES & TERM	CURRENT STUMPAGE RATE fall 1975
Southcentral Timber Development[1]	124 MMbf Sitka Spruce; 1967-1977	$11.25/M
	106.2 MMbf Sitka Spruce; 1967-1977	16.25
	100.6 MMbf Western Hemlock; 1969-1989	12.00
Kodiak Lumber Mill[2]	285 MMbf White Spruce; 1973-1983	1.00*
	116 MMbf Birch & aspen; 1973-1983	2.00
	24 MMbf Cottonwood; 1973-1983	4.00
Wrangel Lumber Co.[3]	15.9 MMbf Sitka Spruce; 1971-1976	14.35
	3.8 MMbf Western Hemlock; 1971-1976	8.60

*Beetle-killed white spruce salvage sale. Source: Mr. L. A. Dutton, Alaska Dept. of Natural Resources, pers. comm.
1/Subs. of Iwakura-Gumi.
2/Subs. of Mitsui.
3/Subs. of Alaska Lumber & Pulp Co.

TABLE 3. MAJOR PURCHASERS OF WASHINGTON STATE TIMBER: JAPANESE OWNED OR WITH JAPANESE EQUITY BACKING

FIRM	1974 RANK IN TOP 20 BUYERS OF STATE TIMBER	1974 VOLUME CUT Mbf	12/21/74 UNCUT VOLUME UNDER CONTRACT Mbf
Eclipse Timber Co.	1	46,458	54,394
Marubeni-Iida America Corp.	2	42,842	83,359
Timber Traders, Inc.	5	30,625	57,598
Allen Logging Co.	7	24,787	51,326
F. R. Bradley Logging Co.	9	18,545	63,533
Norman Barnes & Co.	17	10,352	1,276
West Coast Orient	18	10,115	32,048
Total, Above Firms	--	183,724	343,534
Total, Statewide	--	566,585	1,451,225

Source: State of Washington, Department of Natural Resources.

TABLE 4. FEDERAL TIMBER CONTRACTS HELD BY JAPANESE FIRMS IN ALASKA

FIRM	CONTRACT TERM YEARS	VOLUME
Kodiak Lumber Mills	10	332 MMbf
Alaska Lumber & Pulp	50 (to 2001)	approx. 5.0 billion b.f.
	25 (to 1981)	694 MMbf
South Central Timber Development	several small, short-term sales.	

Source: U.S. Forest Service

*Represents total contract volume, not volume remaining to be cut as of 1975.

TABLE 5. FOREIGN FOREST INDUSTRY FIRMS OWNING AND CONTROLLING LAND IN THE U.S., 1975

COUNTRY	FIRM & LOCATION	ACREAGE	PRODUCTS
CANADA	MacMillan Bloedel		Pulp & paper
	Pine Hill, Ala.		Softwood plywood
	Owned	90,000	Lumber
	Controlled	290,000	Paperboard
	Total	380,000	
	Abitibi		Newsprint
	Mich., Ga., & S.C.		Fiberboards
	Owned	89,000	
	Controlled*	80,000	
	Total	169,000	
	Irving Pulp & Paper		
	Maine	250,000	Timber
U.K.	Bowater		Newsprint
	S.C. & Tenn.		Pulp
	Owned**	578,000	Paperboard
	Leased***	363,000	Lumber
	Total	941,000	
JAPAN	Mitsui		
	through subsidiaries		
	in Alaska & Cal.	10,900	

Sources: Direct contacts with companies and others; public sources.
*Mostly in 3-5 year management agreements.
**60,000 acres are owned by Catawba Newsprint which is 49% American owned.
***Option to purchase on most of this land.

	Thousand Acres
Owned by foreign forest products firms	1,018
Leased by foreign forest products firms	733
Total	1,751
Total timberland owned by forest industry	67,341
Total commercial timberland	499,697

This acreage is a small percentage of the nation's commercial forest land.

The leases employed to control forest land vary widely in their terms. Some are really 3-5 year management agreements; others are long-term leases; still others include options to purchase and are essentially devices for financing land acquisition.[1]

It is impossible to estimate the timber volume or the growth potential represented by these foreign-owned timberlands. Their relative importance, however, could not differ substantially from their importance based on acreage.

Related Operations

Most major Canadian and multi-national forest products firms maintain sales offices in the United States, as do a large number of Japanese trading companies. MacMillan Bloedel owns a wholesaling subsidiary (Blanchard) which serves the U.S. market as would any U.S. based wholesaler. Canadian Hydrocarbons' Gold Rey Forest Products subsidiary has two yards in Oregon and Idaho.

The United States is also a major market for makers of sawmill, veneer mill, and papermaking equipment. A number of foreign-owned equipment suppliers own facilities in the United States, but their specific nature was not investigated in this report.

Alaska: A Special Case

Foreign activity in U.S. timber is most extensive in Alaska. A number of specific conditions make the Alaska case unique:

--A history of industry promotion by the U.S. Forest Service back to the 1920's.[2]

1/For more on timber leasing, see W. C. Siegel, Long-term Contracts for Forest Land and Timber in the South. USDA Forest Service, So. For. Exp. Sta. Res. Paper SO-87. 1973.

2/D. C. Smith, Pulp, Paper, and Alaska. Pacif. Northwest Qly., April 1975; A. S. Harris and W. A. Farr, the Forest Ecosystem of Southeast Alaska. USFA, PNW Forest and Range Experiment Station Gen. Tech. Rept. PNW-25. 1974. See also Anon., Federal Land Laws and Policies in Alaska.

--Geographic proximity to Japan, and market opportunities affected by the Jones Act, which requires use of U.S. ships for cargo movements between U.S. ports.

--The existence of virtually no privately-owned timber in Alaska.

--Regulations on timber export that differ from those in the lower 48 states. National Forest timber cannot be exported in log form, but regulations prescribe that sawing off two slabs to form a "cant" is sufficient to meet legal processing requirements. Timber from State of Alaska land is available with no export restrictions.

--Availability of timber from state and federal lands on extremely long (20 to 50-year) contracts, provided as an industrial development measure.

Japanese interest in Alaska forest industry began with a formal contact in 1951 and the incorporation of the Alaska Lumber and Pulp Co. in 1953. The A.L.P. Co. mill at Sitka was completed in 1959, supplying lumber, cants, and high-grade rayon pulp to Japan. The successor firm, Alaska Pulp, is now owned by about 140 wood-using firms, trading companies and a few Japanese government agencies.

Japan's largest lumber company, Iwakura-Gumi, owns the South Central Timber Development Co. which operates a sawmill at Jakolof Bay. The trading company, Mitsui, operates Kodiak Lumber Mills, Inc. and its Afognak Timber logging subsidiary. Through this subsidiary, Mitsui controls 7,500 acres of U.S. timberland.

These concerns control an investment in mills and equipment that has been estimated at about $142 million.[1] Together, they are the most significant force in the state's timber industry. The Japanese market is also the destination for the bulk of the pulp, chips, lumber and cants produced by domestic Alaskan operators.

With the Jones Act restrictions on access of U.S. firms to the world shipping market[2] Alaska's struggling forest industry would be even smaller than it is today it if did not have access to Japanese investment. Japanese capital moved into the state following a 30-year effort to attract U.S. capital. The Japanese, more desperate for fiber, have thus taken a place in a region in which U.S. capital was unable or re-

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NTIS PB 195-294-LK to 298-LK (5 vols.) 1974.

1/Alaska Dept. of Economic Development. Japanese Investment in Alaska. August 1974. Also, letter from C. A. Yates, Regional Forester, USFA Juneau, Alaska, to Mr. Milton Berger, U.S. Dept. of Commerce, Aug. 15, 1975.

2/The Jones Act requires shipments between U.S. ports to use U.S.-owned ships. See J. W. Austin and D. Darr, The Jones Act...J. Forestry, Oct. 1975.

luctant to invest. The major U.S. plant in the state, Ketchikan Pulp, was established by Japanese firms and later bought by U.S. interests.

Effects of Foreign Investments in U.S. Timberland and Forest Industry

Foreign investment in U.S. timberland has been so small that adverse and favorable impacts on the nation's economy cannot be directly identified. The economic effects of foreign investment in timberland may be no different than foreign investment in other renewable resources, such as farmland. These issues are treated elsewhere in this study. For processing capacity, overall impacts are discussed in the literature on Multinational Corporations.[1]

Canada's forest economy has been subject to considerable foreign control. In 1968, nonresident owners controlled 30.7% of the assets in the wood industry and 39.4% of the assets in the paper and allied products industry.[2] Foreign control of mining and petroleum is even more extensive. For this reason, considerable analysis and discussion have been devoted to the assessment of economic effects, the analysis of political impacts[3] and the formation of policy toward foreign investment.

Since there is little empirical basis for identifying effects on the U.S. economy, this section will summarize a few specific points.

--In Alaska, Japanese investment has permitted the development of a productive forest resource. For a number of reasons, this resource was not attractive to U.S. capital. Foreign investment has thus produced a net gain in jobs and exports. Some have objected to the environmental impacts of timber operations in Alaska as currently conducted, but this is a different issue.

1/See, for example, R. Barnet and R. E. Müller, Global Reach--The Power of the Multinational Corporations. New York: Simon and Schuster, 1974; R. Vernon, Sovereignty at Bay. New York: Basic Books, 1971; J. N. Behrman, National Interests and the Multinational Enterprise--Tensions Among the North Atlantic Countries. Englewood Cliffs: Prentice-Hall, 1970; H. M. Gregersen and A. Contreras, ibid.

2/Foreign Direct Investment in Canada, Information Canada, 1972 reprinted 1975. p. 21. (The "Gray Report".)

3/See the Gray Report, and: Canada Intergovernmental Conference Secretariat, Federal Provincial Commission on Foreign Ownership of land--report to the First Ministers. Ottowa: Information Canada, Sept. 12, 1975; G. L. Reuben and F. Roseman, The Take-over of Canadian Firms, 1945-61, Econ. Council of Canada, Special Study #10, March 1969; K. Levitt, Silent Surrender: The Multinational Corporation in Canada, Toronto, 1970; I. Brecher, The Myth and Reality of Canada-U.S. Relations, International Perspectives (Journal of Canada Dept. of External Affairs) Nov.-Dec. 1975.

--Elsewhere, foreign-owned U.S. timberland is managed in ways similar to domestically-owned industrial forests. The wood is available to the U.S. market. Foreign ownership, per se, has had little effect on trade since the dominant motive (except in Alaska) has been to serve the U.S. market.

--Most foreign-based firms in the forest industry hire Americans for management and blue-collar positions.

--Foreign control of processing capacity is small. The aggregate effects on the U.S. ecomony are probably also small. In some regional markets, however, foreign firms in boxboard converting could enhance competitiveness.

--Joint ventures between Japanese and U.S. firms have helped finance U.S. capacity and have facilitated exports of timber and products. It cannot be determined whether such capacity would have been built, or such exports occurred, in the absence of the joint ventures.

--Portfolio investments in U.S. forest industry firms are significant and may have helped supply capital to the firms affected.

--Where adverse effects of foreign activity have been alleged, concern has been with exports of fiber and not with timberland ownership as such.[1] In the Pacific Northwest, wood exports have been claimed to raise product prices in the U.S. market and to drive U.S. mills out of business. Others claim that log and chip exports permit higher standards of wood utilization in the region and benefit the nation by increasing exports.

--Because timber markets are imperfectly competitive, additional bidders for land or timber may raise prices or increase price instability. To the extent that a foreign investor is prepared to pay higher prices for land, his entry into the market could injure established firms.

Information Needs

Major recommendations for improved information are:

--Seek information on the terms, prices, and importance of long-term contracts for processed wood products, logs and chips.

--Require by regulation that purchasers of federal timber (U.S. Forest

1/U.S. Congress, Senate, Shortages and Rising Prices of Softwood Lumber. Subcomm. on Housing and Urban Aff., Comm. on Banking, Housing, and Urban Aff. 93d Cong. 1st Sess. March 26 and 27, 1973. One of a series of Congressional inquiries into log exports.

Service, Bureau of Land Management, Bureau of Indian Affairs) disclose any foreign equity interests or financial backing.

--Assemble and verify reported statistics on purchases of state-owned timber by foreign firms.

--Monitor foreign acquisitions of stocks or debt issuances of U.S. forest products firms, using the established system of the Department of Commerce.

--Monitor foreign purchases of tracts of forested land.

--Conduct pilot studies to determine the extent of concealed ownership of forest land using blind trusts, nominees, or other devices.

--From a local perspective, foreign ownership is really a special case of absentee ownership, which is quite common in the U.S. forest industry sector. For example, large acreages of timberland in Maine and the South are owned by firms headquartered in New York or on the West Coast. Better information on the importance of absentee and foreign ownership, and on its economic and political dimensions, would be useful.

An improved information base will permit a more accurate appraisal of the net impact of foreign ownership of timberland on the U.S. economy.

Conclusions

Foreign ownership of U.S. timberland is small--about 2 million acres, less than one percent of the nation's commercial forestland. An unknown, but probably small, acreage is owned by individuals. In addition, foreign firms participate in processing wood products in the United States. Taken together, however, their market share is not large. Evidence on the effects of this investment is weak. Assessment of specific favorable or negative impacts is hindered by lack of data and conceptual difficulties.

Several nations--notably Japan and Scandinavia--have taken steps to control U.S. wood fiber through contracts, but they have not purchased timberland in significant amounts. Some allege that Japanese purchases of logs and chips from the U.S. Northwest have adversely affected that region's industry. This may or may not be true, but it is an impact unrelated to foreign ownership of timberland *per se*.

The major foreign owners of U.S. forest land are Canadian and British manufacturers. Their principal motive is to serve the U.S. market.

The longterm record of capital appreciation for timberland has generally been good. In the future, foreign investors seeking a safe haven for funds may find forest land attractive. The foreign-owned forest products firms that now own land will probably slowly expand their holdings. Japan and the Scandinavian countries will continue to buy wood from the United States, but it is uncertain whether they will expand their ownership of U.S. timberland.

FOREIGN OWNERSHIP AND CONTROL OF U.S. MINERALS AND MINERAL LANDS

Walter C. Labys*

Introduction

The economic impact of alien investment on minerals and mineral lands is sufficiently unique as to warrant special attention. Among the minerals of interest are principally those described in Table 1: metals, fuels, and the nonmetallic minerals. In order to evaluate economic impact we must first ascertain the nature of foreign investment in minerals. What is the form, character, and level of this investment? What processes and mechanisms are used? What factors stimulate or control it? Next, we must specify the research needed to measure its economic impact. What is the structure of the domestic host mineral economy and how does it relate to the national economy? To answer these questions, we need to identify policies influencing foreign investment. What policy areas are the most important? Who are the participants in this area? A case study is presented based on foreign investment in West Virginia coal to help clarify these various questions. The conclusions point to the type of data and analysis needed to provide realistic policy recommendations.

Facts and Issues

Foreign Mineral Investment Defined

The share of petroleum and other mineral industry investment in total foreign investment increased from 18 percent to 27 percent between 1960 and 1974. What this means in absolute numbers is a doubling from $2.4 billion to $5.9 billion over that period. This rate of growth is roughly equivalent to that of the U.S. economy.

Investment in minerals differs from agricultural or real estate land investment, which can be measured in acres. Minerals normally are mined and the size of the investment relates to production or reserves. The degree of foreign influence thus relates to the production or resources controlled by a firm which is foreign-owned (or domestic-owned with a strong foreign equity position) rather than to the related surface area.

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Table 1--Selected Classification and Listing of Minerals

Metals	
Precious metals	Chromium, manganese, molybdenum, tungsten, vanadium, beryllium
General utility	Iron, copper, lead, zinc, tin, mickel, mercury
Light metals	Aluminum, magnesium, titanium
Fuels	
Coals	Anthracites, semibituminous, bituminous, sub-bituminous, lignite, brown coal
Petroleum	
Natural Gas	
Shale	
Uranium	
Nonmetallic minerals	
Sulfuric	Sulfur and pyrites
Fertilizers	Nitrates, phosphates, potash
Fluxes	Fluospar, dolomite, magnesite, cryollite
General utility	Lime, limestone, chalk, kaolin, chine, clay, asbestos, mica, graphite, gypsum

The actual placement of the investment can differ substantially in character. Investment in minerals and mineral lands normally involves highly capital-intensive operations such as drilling or strip and deep mining. Foreign investment may be of a direct type that contributes to the real accumulation of capital facilities; or it may be a financial type that improves the cash position of the firm. Some investment may be strictly a portfolio type. Here, the investment is not considered direct unless control of management can be exercised. To this end, the government classifies direct investment as a holding of more than 10 percent of the outstanding voting stocks.

A predominant form of foreign investment in the mining industry relates to long-term supply contracts. Financing of an existing firm takes place with or without equity; a share of the firm's output is allocated for export to the investor in the home country. In describing these investments, almost all documentation relates to the dollar values of investment or the anticipated increase in output. Only rarely is there information concerning the actual quantities or qualities of the land or reserves involved.

Why have foreigners looked at the mineral industries for investment? This question can only be answered through the analysis of information on individual minerals. Historically, the United States has been a major producer of traded minerals. In some cases, it has a considerable advantage in reserves and production, e.g. potash or molybdenum. It also offers a more stable economic and political environment for investment, especially when compared to the environments of developing countries which represent the major alternate suppliers. Another advantage is its relative proximity to Europe.

More specifically, some foreign investors want access to minerals that could possibly come under U.S. embargo by changes in law or by international political tensions. Minerals also provide materials that enable a foreign firm to compete at the manufacturing level in the large and growing U.S. domestic market. This not only assures a regular supply of minerals for manufacturing and completes the cycle of export substitution, it also reduces the fear that trade restrictions might inhibit imports of raw or processed minerals.

Finally, minerals such as petroleum, coal, and uranium are especially valuable because of the present energy crisis. On the one hand, a country can directly meet present and future energy needs by finding new supply sources. For example, the new energy strategy of the European Economic Commission, featuring a common coal import policy, encourages investment in coal mines by Western European firms. On the other hand, international firms such as those producing steel need long term supply commitments in metallurgical quality coal. No sources excel the United States in the quality of low sulfur coking coals.

Other factors in foreign investment relate less directly to the immediate value of minerals or materials. United States mining processes are technologically advanced, and foreign direct investment permits access to technological innovation. Also, United States labor in mining and related work is relatively cheap and relatively flexible. To these can be added: the position of the dollar after successive dollar devaluations and foreign currency revaluations; the relatively low prices of the United States stock market featuring mineral firms with bargain-price earnings ratios; the desire of Middle Eastern oil producers to obtain oil firms that carry out the final processing and distribution; or the ability of multinationals to compete by having a base with which they can retaliate for price reductions in other countries.

It is difficult to assess the magnitude of mineral foreign investment

in the United States. Foreign investments in minerals probably are related to less than 5 percent of total mineral output, but present data do not permit confirmation of this figure.

Economic Impact of Mineral Investment

The economic impact of investment in minerals is reflected in (1) the mineral markets themselves, and (2) the surrounding national economic framework. With respect to the former, investment not only influences production but also reserves, consumption, prices, and inventories. 1/ A mineral commodity differs from other commodities because of its stock-flow character. That is, reserve levels of natural resources represent a stock which can be converted to supply and demand flows but which cannot be replaced once they are exhausted.

Investment in minerals land or industries can thus affect price, if supply or demand deviate from "normal" levels. It can also affect the market structure if non-competitive elements are introduced. Some minerals industries typically have a high degree of vertical integration. Here, foreign ownership can cause a loss of local control over mineral production, even causing the local economy to absorb the income instability associated with primary commodity markets. Foreign investment can also influence the depletion of a mineral, either encouraging reserve exploration or mining reserves at rates that would accelerate the deterioration of the United States reserve position. Control of a segment of the minerals industry thus implies a degree of control over the long term reserve position. And finally, it could hamper the execution of government policies in regard to certain minerals: for example, exports of coal have been criticized because of domestic shortages.

The impact of foreign investment on the national economy would depend on the interrelationships between the mineral commodity markets and the national economy. First, there are balance-of-payments effects based on mineral trade or exports and imports. Outputs are affected if local demand is curtailed in order to expand exports. Inputs are affected if domestic minerals are used by the foreign firm for manufacturing in lieu of its normal imports of materials. Balance-of-payment effects also embody net capital flows. Some equity capital normally accompanies mineral investments. Since minerals production does not involve the import of finished goods, the immediate outflows are interest and dividend payments.

Such effects can be measured relatively easily; it is more difficult to determine employment effects. Does the foreign investment represent one that would otherwise have been made by a United States firm? Scattered evidence suggests that, for the minerals industry, foreign investment creates employment that would not have been available otherwise. In fact, a number of state development agencies have attempted to attract foreign investment because of the related employment and payroll benefits.

1/ A description of the interrelationships involved appears in W.C. Labys, Dynamic Commodity Models, Lexington, Mass., D.C. Heath and Co., 1973.

National income effects also can be traced. Most obviously, changes in real domestic output or domestic services can be assessed. But we might also want to compare the rates of return on foreign investment in the United States with those obtained from similar investments elsewhere. And impact multipliers can be determined, linking the foreign component of investment to national income. As for relationships to financial markets, the inflow of foreign capital can help relieve current capital scarcity.

Finally, economic impact can only be measured through a detailed survey and analysis of the behavior of inverstors at the firm level. What role is played by financial intermediaries? To what extent are United States firms forced to seek capital abroad? How large are foreign investments relative to total investment? What proportion of total output is controlled by foreign ownership? And what proportion of total reserves or land area could come under foreign control? This latter question relates to whether land and reserve encroachment in the short run will multiply over time to become a long-run problem. The foreseen scarcity of certain minerals implies that foreign investment in these resources will increase at least in line with total United States economic growth.

Policies Relating to Mineral Investment

Linked to the economic impacts of foreign investment are the government policies which guide the minerals industry. Such policies need to be better defined and understood. Their impact could then be tested, based on the variables they influence in the mineral markets or the national economy. Essentially, we need to study the important policy areas and the participants involved--both the administrating agencies and the investors who would be subject to such policies. One can detect here a hierarchy of policy-making agencies and policy participants; a related question pertains to the levels of government at which issues should be resolved.

Important policy areas are: National and regional economic policies, energy policies, defense policies, and environmental policies. Regarding economic policies, national monetary and fiscal policies can affect foreign mineral investors. Monetary policy can encourage foreign mineral investors. Monetary policy can encourage foreign investment as a means of overcoming foreseen capital scarcity, or of correcting balance-of-payments problems. Fiscal policy can relate to taxation of foreign investors. Changes in national taxation policies would not be expedient; state taxation of mineral income and mineral lands could be expanded. Economic policies that deal with different forms of trade restrictions could influence the structure of foreign investment more substantially. However any attempt to to alter foreign investment patterns through trade restrictions is likely to lead to retaliation by other governments which serve as hosts to U.S. firms abroad.

Energy policies relate to whether foreign investment would compromise United States energy programs that are aimed at minimizing United States

reliance on foreign energy supplies. 1/

At present, foreign ownership of United States energy interests varies between 2.4 percent to 12 percent; this share is not deemed critical. Should the Federal Energy Administration find the ratio increasing unusually, they probably will follow the policy guidelines used by the Department of Defense with regard to security matters. These guidelines relate to three control channels: ownership, management, and technical expertise. In this respect, a firm will be analyzed according to: (1) income from foreign sources, (2) degree of foreign ownership, (3)interlocking directorship, (4) licensing agreements, and (5) whether foreign-derived income is less than 6 percent of present gross income. On the whole, however, these guidelines are not very explicit; action by the F.E.A. would require a detailed analysis of individual cases. A final energy policy area would relate to the development of coal, oil, shale, and a few other minerals on public domain land. Under the Mineral Leasing Act, investment on such land is limited to United States citizens only. Such policy is more restrictive then the case of public forest lands, where foreign firms can invest in the timber industry.

Defense or security guidelines as outlined above can also be applied by the Department of Defense to minerals other than energy related ones. For example, uranium has strategic and military importance over and above its usefulness for nuclear power generation. Copper, tungsten, chromite, and manganese have been stockpiled by the United States General Services Administration. In general, the industrial security regulations can be applied to any firm if it appears that foreign investment may compromise United States security. A firm's security clearance can be revoked, making it difficult for the firm to be involved with defense contracts.

Environmental policy can also be critical for foreign investment, since most minerals are extracted at some expense to the visible environment. It is difficult to assess whether environmental damage would be the same, given a United States or a foreign firm. There is the likelihood that foreign firms might be the more sensitive to charges of environmental damage.

Information Sources and Needs: The Case of West Virginia Coal

To understand better some of the problems involved in collecting information on foreign investment and in determining its economic impact, this section presents a case study of foreign investment in a single mineral in a single state--coal in West Virginia.

Foreign interest in coal at the national level has been increasing, particularly since the oil crisis of 1973. Western European countries are searching for long-term arrangements which would comply with the new energy diversification strategy of the European Economic Commission.

1/ See United States Federal Energy Administration, Report to Congress on Foreign Ownership Control and Influence on Domestic Energy Sources and Supply, Office of International Energy Affairs, U.S Fed. Energy Adm., 1974.

International steel companies from Germany, Italy, France, and Japan have made loans or have obtained equity in United States firms in return for long-term supply contracts in coking coal. This latter demand is larger than that for steam coal. Some 19 United States coal companies and mines are believed to have some degree of foreign investment. This includes equity acquisitions, joint venture agreements, and loan agreements or prepayments for future deliveries of coal. The foreign controlled coal mines produced about 14.3 million tons of coal in 1973, or about 15 percent of United States domestic metallurgical coal production.[1/] In terms of the future, foreign controlled production is expected to increase to 26.5 million tons by 1980; this will constitute about 20 percent of the expected total United States output of metallurgical coal. Compared to U.S. output for all coals, the proportions are 2.4 percent for 1973 and 3.5 percent expected for 1980.

Foreign investment is presently known to control a substantial equity for only four of the nineteen coal companies and mines. [2/] The Canadian Algoma Steel Company owns several coal mines. Another Canadian firm, the Steel Company of Canada holds 100 percent of equity in two mines. Two German firms, Ruhrkohle A. G. and Hugo Stinnis A. G., own the Appalachian Resources Company; and a Japanese consortium holds a 20 percent interest in Kaiser Resources Ltd. In these and other instances, foreign participation follows a pattern of foreign equity investments or loans to United States firms, together with long-term supply arrangements. The "tie-in" supply contracts normally require coal exports either to the home country or to overseas subsidiaries of the parent company.

To determine the nature and extent of foreign investment in West Virginia, sources have been investigated beyond the recent Federal Energy Administration survey. The Department of Commerce current survey and study of foreign investment was not completed, so it could not provide supplementary information. The following classification helped identify foreign investments.

Trade Associations:

National Coal Association	Conference Board
West Virginia Coal Association	

Government Agencies:

Bureau of Mines, Department of Interior	Department of Treasury
Securities and Exchange Commission	Department of Defense
Federal Energy Administration	Department of Transportation
Department of Commerce	Internal Revenue Service

1/ Figures presented appear from United States Federal Energy Administration, Ibid.

2/ United States Department of Commerce, Interim Report to Congress on Foreign Direct Investment in the United States, Volumes 1 and 2, United States Department of Commerce, Oct., 1975.

Railroads:
The Chessie System
The Norfolk and Western Railways

Publications:
Coal News [1]
Coal Age [2]
International Coal Trade [3]
New York Times Information Bank
"Weekly News Clippings" of the Consolidation Coal Company
Herald-Dispatch of Huntington [4]

But the actual information provided by any of these sources with regard to foreign investment was limited. Coal trade associations do not maintain records which would help in any systematic investigation. The Coal News of the National Coal Association, however, did feature news items of investments where previous announcement had been made. The Conference Board is unique in that it publishes foreign investment reports regularly, but these relate principally to manufacturing industries. Government agencies were somewhat more helpful. First, the aforementioned studies of the F.E.A. and D.O.C. provided a basic list of foreign investments. And second, the International Coal Trade of the Bureau of Mines provided sporadic notices of investments, in a fashion similar to that of the N.C.A. Although annual reports for coal firms could be consulted within the S.E.C., the scope of this effort did not call for the extensive searching required. Neither the existence nor the location of useful documents could be identified for the remaining agencies, except for the United States Treasury interim report on "Foreign Portfolio Investment in the United States." [5]

Railroad records appeared to be a good prospect, since they provide roadbed and service for new mining ventures. However, their information is not complete with respect to actual terms of investment. Other publications consulted were the clippings service of the New York Times and the Consolidation Coal Company, which revealed some of the investments already located. Coal Age was a good source for domestic coal investment, but no article on foreign investment was found.

Results of the information search are reported in Table 2. Other than identifying the type of investment, the most useful data are the annual production figures for the mines. [6] Figures for recoverable reserves

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1/ Coal News, National Coal Association, Washington, D.C. 1975.

2/ Coal Age, McGraw-Hill, New York, 1975.

3/ International Coal Trade, Bureau of Mines, United States Department of the Interior, 1975.

4/ T.D. Miller, "Who Owns West Virginia?" A collection of articles from the Herald-Advertiser and Herald-Dispatch, Huntington, West Virginia, 1975.

5/ United States Treasury Department. Interim Report to Congress on Foreign Portfolio Investment in the United States, Office of the Secretary, United States Treasury Department, Oct., 1975.

6/ This table was prepared from a number of sources, public and non-public, some of which conflicted. The author assumes no responsibility for its accuracy.

Table 2-- Foreign Investment in West Virginia Coal, 1973-1978

Country and company	Local company/mine designation	Type of investment (percent foreign equity in U.S. operation)	Production 1973 or future (1,000 tons)	Location of supply county
Canada:				
Steelco.....	Kanawha Coal Co.	(100) equity	1,000 a/	Boone Co.
Koppers Joint Venture.....	Beckley Coal Co.	(12.5) equity	(N.A.) b/	Raleigh Co.
	Olga Coal Co.	(10) equity	1,277	McDowell Co.
Defasco.....	Itman Coal Co.	(9.0) equity	1,987	Wyoming Co.
Algoma Coal Division.	Cannelton Coal Co.			
	Kanawha Mines	(100) equity	1,922	Fayette Co.
	Pocahontas Mine	(100) equity	4,091	Fayette Co.
	Maple Meadow Mining Co.	(100) equity	1,000 a/	Raleigh Co.
France:				
U.S.I.N.O.R. A.T.I.C.....	New River Coal Co. Beckley	(Loan - $33 million)	1,000 c/	Raleigh Co.
U.S.I.N.O.R..... A.T.I.C.	New River Coal Co.	(N.A.) joint financing of cleaning operation	560	Raleigh Co.
U.S.I.N.O.R.....	Hawley Coal Mining Co.	(80) equity in reserves and equipment of Beard's Fork, Blue Boy, Empire and Jacob's Fork Mines	2,000 a/	McDowell and Raleigh Co.

See footnotes at end of table.

Continued

Table 2--Foreign Investment in West Virginia Coal, 1973-1978 -continued

Country and company	Local company/mine designation	Type of investment (percent foreign equity in U.S. operation)	Production 1973 or future (1,000 tons)	Location of supply county
Federal Republic of Germany				
August-Thyssen-Hutte Ag.....	Island Creek Coal Co.	(50) equity	1,300 d/	(N.A.)
Ruhrkohle-Stinnes..	Appalachian Resources Co.	(100) equity ($25 million)	900 e/	Fayette Co.
Italy				
Italsider Co.....	Affinity Mining Co.	(50) loan	500	Raleigh Co.
	Keystone No. 5 The Powellton Co.	(N.A.)	500	Logan Co.
Netherlands				
Royal Netherlands..	Beckley Coal Mining Co.	(25) equity	1,500 a/	Raleigh Co.
Blast Furnace and steel works.....	Beckley	(12 1/2)		
Steelco.....	Beckley	(12 1/2) Canadian		
Pickands Mather and Co.....	Beckley	(12 1/2) nonforeign		
Jones and Laughlin Steel.....	Beckley	(50) nonforeign		
Anker Kolen.....	King Know Coal Co.	(100) purchase	1,700 f/	Barbour and Harrison Co.

a/ Estimated future production, b/ Information not available, c/ Forecast 1978 production, d/ Forecast 1977 production, e/ Forecast 1974 production, f/ Forecast 1976 production, g/ Union Siderologique Du Nord De L'est De La France; Assoc. Techniqui De L'importacion Charbonnier.

Source: "Report to Congress on Foreign Ownership Control and Influence on Domestic Energy Sources and Supply." Office of Internations Energy Affairs, Federal Energy Administration, Wash., D.C., Dec., 1974; "Keystone Coal Manual; "McGraw-Hill, Inc., N.Y., 1975; and private industry sources.

are scarce or lacking. Algoma Coal of Canada controls more than 6.0 million tons of production in three different mines. USINOR of France, assisted by the Association Technique d'Importation Charbonniere which handles all French coal imports, has a 35-year contract with New River Coal Company (subsidiary of Chessie System, Inc.) for an estimated annual delivery of 1.0 million tons of metallurgical coal, in exchange for a large loan. France will provide capital costs of about $33 million.

August-Thyssen-Hutte, a German steel manufacturer, joined in a 50-50 venture with the Island Creek Coal Company to develop a mine of coking quality. A venture by Italsider from Italy with the Eastern Gas and Fuel Association should develop a mine with estimated annual production of 0.5 to 0.6 million tons. Finally, the Royal Netherlands Blast Furnace and Steel Works negotiated a 25 percent equity investment, together with Jones and Laughlin Steel, Pickands Mather Company, and Steelco, in the purchase of the Beckley Coal Mining Company.

To compare these investments to investments of domestic origin in West Virginia, information on the latter are reported in Table 3. Also, included are total coal production in West Virginia, together with coking coal production and exports for the United States. The foreign investment included for the first year (1973) contains investments from several prior years; thus, it reaches 10.27 million tons.

The shares of foreign and domestic investment in West Virginia vary year to year. In 1973, coal production related to foreign investment was 8.9 percent of total West Virginia production. This is expected to rise to 16.1 percent by 1978. New production resulting from domestic investment is expected to rise to 21.28 million tons, only slightly higher than the 20.68 million tons associated with foreign investment. While foreign investment at this level is reasonably modest, most of the investment is in coking coals. United States coking coal produced with foreign investment will increase from 11.7 percent in 1973 to 20.8 percent in 1978. As a percentage of United States coking coal exports, the increase is from 24.1 percent in 1973 to possibly 39.2 percent in 1978.

Let us now attempt to assess the economic impact of foreign investment in West Virginia coal. In a previous section, several economic variables were isolated as being most affected: (1) balance-of-payments, (2) employment, (3) income and (4) capital. Since the foreign investments for the most part relate to coking coal for export, the balance of payments position would improve $827.1 million from 1973 to 1978 (based on an average coking coal price of $40 per ton).

Employment effects cannot be so easily assessed. Inquiries suggest that foreign investors provide employment in West Virginia that would not exist otherwise. Public power utilities utilizing West Virginia coals have been reticent to participate in mine development. With respect to income effects, a state tax rebate of 3.8 percent applied to coal production would produce state revenue of $31.4 million by 1978. Based on the West Virginia inter-industry model; the income multipliers for

Table 3--Comparison of Foreign and Domestic Investments in West Virginia Coal Production
(1,000 tons)

Year	New production with foreign investment	New production with domestic investment	West Virginia annual production	Estimated U.S. production coking coal	Estimated U.S. exports coking coal
1973	10,277	1,540	115,446	87,600	42,607
1974	900	2,178	101,714	89,600	51,667
1975	2,750 1/	2,048	108,000 2/	92,100	53,424
1976	4,450 1/	8,208	118,958 3/	94,500	54,813
1977	1,300	---	120,258 3/	96,900	56,238
1978	1,000	7,306	128,564 3/	99,400	57,700
Total	20,677	21,280	115,490	93,400 4/	52,742 4/

1/ Future foreign production unidentifiable for a particular year from Table 2 spread over 1975 and 1976.
2/ Preliminary.
3/ Actual production for 1975 plus estimated production for respective years.
4/ Average annual production, 1973-1978.

Source: Table 2, F. Newcomb, S. Paik, and V. LaRiccia. "Forecasting Capital Investment in the U.S. Coal Industry," Mimeograph, College of Mineral and Energy Resources, West Virginia University, Morgantown, 1975; and Nielsen, G. F., "Coal Mine Survey Shows 236.6 Million Tons of New Capacity," Coal Age, February 1975, pp. 133-136.

increased coal production are 1.43 for deep mining and 2.88 for strip mining. 1/ When applied to the value of coal produced with foreign interest in 1978 (827.1 million), this would generate state income of $1,295.2 million, given a 90 percent and 10 percent division between deep and strip mining. This includes income from wages in production and indirect income in related businesses, as well as successive rounds of consumer spending. The inter-industry table could also be used to yield employment and other data in a more detailed study.

Conclusions and Recommendations

Some issues which must be researched in order to assess the impact of foreign investment on minerals and mineral lands include: (1) determination of the nature and extent of foreign investment, (2) measurement of the economic impact of such investment, and (3) survey of the policy areas of relevance.

The next stage of analysis should involve a benchmark study for the more important minerals, organized on a national basis. Some data and information should become available from the comprehensive studies of foreign investment being carried out by the Departments of Commerce and Treasury, under the Foreign Investment Study Act of 1974 (P.L. 93-479). For preliminary results, see U.S. Department of Commerce, Interim Report Volume 1 and II, U.S. Treasury Department, Interim Report, and United States Office of Management and Budget, United States Government Collection Activities. 2/

The data which are most needed, however, are not likely to be included in the foregoing studies. These data also relate to the domestic ownership and control of our mineral resources. Here, I refer to parameters of mineral control such as investment levels, production, sales, land area and reserves. The "disclosure problem," the use of proxies and nominees to coverup true ownership patterns, and the presently outdated laws of incorporation obscure facts which should be a matter of public record.

Future monitoring of foreign as well as domestic investment in minerals would thus require data systems superior to those presently available. Among the more critical problems are as follows:

(1) An "Early Warning" system is lacking; information is made publicly available only after it appears in news sources.

1/ W.H. Miernyk, et. al., Simulating Regional Economic Development, Lexington, Mass., D.C. Heath and Company, 1970, p. 193. Those multipliers are historically based and would differ somewhat for future projections, especially given the likelihood of increased costs levied to support environmental protection measures.

2/ United States Department of Commerce, loc. cit.; United States Treasury Department, loc. cit., and United States Office of Management and Budget, United States Government Collection Activities with respect to Foreign Investment in the United States, Council on International Economic Policy, U.S. Office of Management and Budget, March 1975.

(2) Full information regarding the name and nationality of the financial beneficial stockholders is not available.

(3) As corporate stock is sometimes held by nominees, portfolio investment can lead to investment control without detection.

(4) Property records pertaining to land control are insufficient where deep mining techniques are involved.

(5) Details regarding alternative forms of control, such as purchases of commodity futures contracts in copper, lead, zinc, etc., are not reported.

To measure the economic impact of investment in minerals at a national level, some form of inter-industry analysis will be necessary. Data collection such as that related to (positive) capital and (negative) royalty flows within balance-of-payment accounts would provide ready information for evaluating certain parameters. However, a more comprehensive method is needed for measuring the magnitude and incidence of economic effects. Some information typically derived from inter-industry analysis includes: (1) impact of investment on incomes earned from construction, and from successive rounds of consumer spending and; (2) impact of investment on production income and related rounds of consumer spending and; (3) impact of production on state and national tax revenues. Other impacts relate to productivity, employment, wage levels, the environment, and higher land prices.

As can be inferred from this chapter, considerable further work is needed in order to arrive at a complete picture of foreign investment in minerals and mineral lands.

FOREIGN INVESTMENT IN HAWAIIAN REAL ESTATE

Karl Gertel*

The Setting

From the early decades of the past century, inflows of capital and human resources from many nations built the economy of Hawaii. By the end of World War II, agriculture and national defense were the foundations of this economy (Table 1). Rising national per capita income in the post-war period and expanding air travel have catapulted tourism to the major source of gross income since 1972.

Accompanying the recent growth of the Hawaiian economy was a large movement of capital into the state to provide the needed investment funds. While direct statistics are unavailable, the magnitude is suggested by Hawaii's balance of payments accounts (Table 2). The balance between out-of-state earnings and out-of-state expenditures changed from a small surplus in the 1950's to large deficits since 1969, reaching $480 million in 1970.

Through most of the post-war period, Hawaii's economic growth was favorably regarded by the population and vigorously supported by state policies. As in much of the nation, attitudes toward economic growth have been tempered in recent years. Questions have been raised about effects of economic growth on urbanization of agricultural land and scenic areas, prices for residential land, and congestion. These concerns are felt most keenly on the Island of Oahu. In 1974, the island contained some 80 percent of the state's civilian resident population of 792,000, but it comprises only some 600 square miles, or 9 percent of the state's land area.

The Hawaiian government has a long record of economic planning, and has pioneered in statewide land use controls. 1/ In recent years, state efforts

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1/ State of Hawaii, The General Plan of the State of Hawaii, 1961, General Plan Revision Program, 1967, Report to the People, Second Five Year (Land Use) District and Boundaries Review, February 1975. Above publications produced by or available from Hawaii State Department of Planning and Economic Development.

Table 1--Output from major economic activities
state of Hawaii, 1952 and 1964 through 1974
(millions of dollars)

Year	Defense expenditures	Value of fresh and processed pineapple	Value of raw Sugar and molasses	Visitor expenditures
1952	$195.0 1/	$ 92.0	$134.0	$ 32.8
1964	392.6	126.9	154.6	205.0
1965	430.2	126.7	165.7	225.0
1966	488.4	127.7	179.6	280.0
1967	561.4	133.3	180.3	380.0
1968	574.6	127.5	189.1	440.0
1969	625.9	125.4	179.0	525.0
1970	639.4	138.6	187.8	525.0
1971	708.8	141.4	202.9	645.0
1972	744.2	145.4	184.7	755.0
1973	840.9	142.4	222.2	890.0
1974	897.9	124.3	676.6	1,070.0

1/ Includes military and civilian payrolls only.

Sources: 1952, Perry F. Phillip. Diversified Agriculture in Hawaii, University of Hawaii Press, 1953, pp. 2,3. 1964-1974, Research and Economic Analysis Division, Department of Planning and Economic Development. State of Hawaii. The Impact of Tourism on the Hawaii Economy--An Input-Output Analysis, Research Report, 75-2, July 1975.

have been directed at the difficult task of formulating policies and measures designed to balance strong pressures for both sustained economic growth and concerns over the consequences of this growth. State plans published in 1974 call for more moderate future growth of tourist facilities, especially in Waikiki.[2/] Investments from the other U. S. states and from

2/ State of Hawaii Growth Policies Plan, 1974-1981. Department of Planning and Economic Development, 1974.

Table 2--Balance of payments, out of state earnings, out of state expenditures, Hawaii, 1950-73
(millions of dollars)

Years	Hawaiian earnings, out of state				Hawaiian expenditures, out of state				
	Commodity exports	Federal expenditure	Services performed	Return, overseas investment	Commodity imports	Payments To Federal Government	Services performed	Return, investment in Hawaii	Balance
1950-59 inc.	2,596	3,319	1,138	278	4,168	1,583	1,063	310	+207
1960-69 inc.	3,296	6,827	3,793	809	7,595	3,802	2,459	910	-41
1969	367	986	683	121	1,200	634	341	155	-173
1970	391	1,079	727	128	1,534	672	446	153	-480
1971	412	1,219	825	144	1,425	696	450	185	-156
1972	410	1,302	936	154	1,464	744	484	220	-110
1973	455	1,526	1,133	176	1,904	846	572	252	-284

Source: Bank of Hawaii, Annual Economic Review. For 1950 to 1971 as summarized in Heller, H. R. and Heller, E. E. Japanese Investment in the United States. With a Case Study of the Hawaiian Experience. Praeger, 1974. Table 4.1.

abroad are welcome. The policies of the state are not to distinguish between sources of investment, but to encourage joint ventures with Hawaiian concerns and types of investments that diversify the economic base, such as investments in agricultural, marine, and scientific enterprises.

Recent Increases in Foreign Real Estate Investment

Causes

The "take off" in the recent wave of real estate investments in Hawaii occurred in March and April of 1972. In those months, investors from Japan purchased a resort hotel on the Island of Kuai, 165 acres of beach-front property on the Island of Hawaii, a golf course and a site for a condominium on the Island of Oahu. As shown in Table 3, Hawaii was by that time well on the way to becoming an international tourist center. This sequence suggests that foreign investors were attracted to Hawaii by an existing and rapidly growing tourist market. While foreign investors may have made some contribution to travel to Hawaii by their own nationals the view of business and government in the state is that foreign investment is, in the main, not the cause of foreign tourists but that both foreign tourists and foreign investors were impelled by the same basic forces.

Foremost of these forces were rising incomes in Japan and other Pacific nations. In Japan, this force was augmented by powerful additional incentives: the 37 percent appreciation of the yen against the U. S. dollar between May 1970 and July 1973, and the easing of the Japanese government's restrictions on the outflows of money, for both foreign travel and foreign investment. 3/ The comparative stability and security offered by the United States, as well as the physical attractiveness of Hawaii, were further incentives. Contributing also was a favorable attitude and active encouragement by the government of the state. In 1970, the local press featured the success of the Hawaiian Pavilion built at the World Fair in Osaka, Japan, at a cost of about $1 million. In 1971, Hawaii's Lieutenant Governor led a delegation to Japan for the purpose of encouraging investment in the state; this was one of several trade and investment missions from Hawaii to Japan.

Types and Amounts of Foreign Real Estate Investment

A complete and up-to-date listing of all foreign investments in Hawaii is unavailable. The most complete listing is maintained by the International Services Agency of the Hawaii Department of Planning and Economic Development. It is based on newspaper reports and interviews, and lists purchase price and cost of new construction for 91 investments in the state as of March 1975. These are mostly major investments, and exclude numerous small businesses, personal residences, and house lots. A partial check of purchase prices recorded in documents of conveyance showed that the list prices were

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3/ Exchange rates by Morgan Guarentee Trust Co. as quoted in the New York Times, July 18, 1975.

Table 3--Visitors to Hawaii, overnight or longer by country of residence, 1960 to 1974 (thousands)

Total	Total	United States	Canada	Japan	Australia and New Zealand 1/	Pacific and Asia 2/	All others 3/
1960	296.5	237.2	20.8	14.8	11.9	8.9	2.9
1965	686.5	541.0	48.5	36.4	30.3	18.2	12.1
1970	1,514.5	1,120.0	80.0	131.5	69.1	52.5	61.4
1971	1,730.0	1,253.0	100.0	180.0	82.0	66.0	49.0
1972	2,244.0	1,662.0	125.0	235.0	100.0	65.0	57.0
1973	2,631.0	1,921.0	150.0	NA	NA	NA	NA
1974	2,786.5	1,999.5	175.0	350.0 4/	NA	NA	NA

1/ South Pacific Island included with Australia and New Zealand in 1971 and 1972.

2/ Excludes Rest and Recuperation personnel and dependents.

3/ Includes Europe (40,000 in 1972), Latin America and the Caribbean (15,000), and Africa (2,000).

4/ Total Japanese arrivals in Honolulu.

Sources: 1960 through 1972, State of Hawaii Data Book, 1974, Hawaii Department of Planning and Economic Development. 1973 and 1974: Annual Report, Hawaii Visitors Bureau Japanese arrivals in 1974: Working Data, Office of Research and Analysis, U. S. Travel Service.

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overstated for some entries and missing for others. However, the totals are believed to be approximately correct.

The total value of foreign investments in Hawaii, excluding some $36 million of stocks, bonds, and mortgages in U. S. owned concerns as of March 1975, was estimated at $586 million or 12 percent of the asset value of all active domestic Hawaiian corporations in 1970. 4/ This amount includes U. S. owned equity shares in at least 11 joint ventures, as well as mortgages and other obligations of foreign investors. It excludes some substantial improvements in foreign owned properties that were made subsequent to acquisition. Some $359 million, or 61 percent of the $586 million

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4/ Heller, H. R. and Heller, E. E. Japanese Investment in the U. S. With a Case Study of the Hawaiian Experience. Praeger, 1974, p. 98

total, consists of Japanese investments. Other major foreign investors are Australian, Hong Kong based, and Canadian, with asset values of foreign controlled enterprises of about $81 million, $62 million and $52 million respectively. The preponderance of this investment is in real estate. The total for several types of real estate investments enumerated below is some $517 million. This represents about 2 percent of market value of all land and improvements in the state. 5 /

The largest single category of foreign real estate investment was represented by some $272 million in hotels, of which $207 million was Janpanese owned. A substantial portion of this, some 38 percent of the foreign owned hotel units on Oahu, which has 80 percent of all foreign owned hotel units, is located on leased lands. Ownership of the land remains Hawaiian. The Hawaii Department of Planning and Economic Development estimated that, as of March 1975, some 23 percent of the hotel accommodations in the state were foreign owned, of which 19 percent were Japanese. In the Waikiki area, the corresponding figures were 27 percent for Japanese owned hotel units.

The value of foreign owned condominiums were some $98 million of which $56 million was Japanese owned. A substantial number of the foreign owned condominiums are located on leased land.

Foreign owned land in subdivisions and vacant land with resort or subdivision potential are largely Japanese investments. They totaled nearly 10,000 acres in March 1975, with an estimated acquisition value of $69 million. Subsequent acquisitions place the total at about 12,000 acres and $74 million.

Other non-agricultural real estate investments include office buildings and apartments with estimated acquisition values of $15 million and $2 million respectively, and 4 of the 15 civilian operated golf courses on Oahu. Foreign investment in agricultural land is represented by Theo H. Davies Co., acquired for $54 million; and the Kahuku Agricultural Company, established with assets of $200,000.

Theo H. Davies was acquired by Jardine Matheson Co. of Hong Kong, which had been a major shareholder of Davies stock. The acquisition was through tender offers to the company's American and foreign (mainly British) shareholders. Theo H. Davies is a diversified company. It owns some 42,000 acres and operates some 81,000 acres on the Island of Hawaii, distributed over four sugar plantations, and one ranch. 6/ The land in sugar cane owned and leased is about 31,000 acres and represented 14 percent of the total land in cane in the state in 1974. 7/ The new owner announced high

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5/ Based on assessor's gross valuation of property in 1974 as reported in Bank of Hawaii, Hawaii 75, Department of Business Research and Hawaii Department of Taxation: Hawaii's Assessment-Sales Ratio Study 1973, Property Technical Office, December 1974. Processed.

6/ Based on records of Hawaii State Department of Taxation.

7/ Ibid and Statistics of Hawaiian Agriculture, 1974. Statistical Reporting Service, U. S. Department of Agriculture in cooperation with the Hawaii Department of Agriculture.

priority for continued sugar production and plans for substantial investments for that purpose. Because of long established and stable operations of the land under local management, many in the local community do not think of these agricultural operations as foreign.

The Kahuku Agricultural company is a joint Japanese-American venture, managed by a former president of the Hawaii Farm Bureau. The company processes tropical fruits which it produces on some 500 acres of leased land. It has secured a market outlet through a major U. S. firm. Because it provides employment in an area where a sugar plantation has gone out of business, it is welcome in the community. The state encourages further agricultural investments especially in areas where plantations have gone out of business and local employment opportunities are limited. The record indicates that successful investment in new agricultural enterprises depends on thorough knowledge of both physical and economic conditions of production and marketing.

In summary, foreign real estate investments in Hawaii, while not large by world standards, are significant in terms of the economy of the state. They do not represent a significant shift from the prevailing pattern of American investments. The majority of the investments have been take-overs of existing resort facilities, agricultural enterprises, and subdivisions, but over $140 million in new construction has been identified. This amount would be considerably larger if all major improvements subsequent to the initial investment were added.

Some Characteristics of Foreign Real Estate Investors and Their Operations

The Investors

The majority of the foreign investors are large corporations or their subsidiaries based in Japan, Australia, Canada, Hong Kong, and the national airlines of the Republic of China and South Korea. Among the Japanese investors are some of the largest companies of that country, engaged in such diverse fields as insurance, construction, and development, public transportation, credit cards, radio and television broadcasting, and the export-import trade. Represented also are some smaller and less well known firms. The majority of these companies or their parent companies have had experience in real estate investment, but only one was identified which had real estate investment experience in Hawaii prior to 1970. A report to the government of Japan by the Boston Consulting Group concludes that future Japanese overseas investments are unlikely to be centrally coodinated, but the result of many separate investment decisions. 8/ The applies also to Japanese investments in Hawaii.

8/ The Boston Consulting Group, The Prospects for Japanese Direct Investment in the U. S., 1974-1980. January 1974

Prices Paid

The impression from limited but repeated evidence is that prices paid for real estate by foreign investors were often high compared to what was judged to be market value prior to purchase. This point was made by three witnesses at the U. S. Senate Subcommittee Hearings of Foreign Commerce and Tourism, held in Honolulu in December 1973, 9/ and in a Fortune Magazine article dealing with Japanese investments in Hawaii. 10/ The same point was made to the author by two specialists in Hawaiian real estate. According to newspaper reports, the tender offers made for shares in the Theo H. Davies Co., exceeded the all-time high recorded on the Honolulu Stock Exchange. 11/

Prices paid are linked to the important questions of motives and expectations. Three possibilities are suggested. First: foreign investors pay high prices because of optimistic expectations of future property values based on trends in their own countries. If this is the dominant motive then the effects on prices for land and real estate will be permanent only if these optimistic expectations are realized. Second: foreign investors pay high prices because they are willing to accept a lower rate of return than American investors. To the extent that this is true, price effects are more likely to be permanent. Third: foreign investors pay high prices because they are planning uses for land and improvements not considered by American investors. To the extent that is true it is important that these uses and their compatibility with American interests be known. A number of conditions favorable to foreign investment in Hawaii have been identified but a determination of specific investor motives in the light of their expectations and investment alternatives available to them is beyond the scope of this report. The question is raised as an important research issue in foreign real estate investment.

Management and Investment Experience

A significant portion of foreign real estate investment is under American management. Some 66 percent of all foreign owned hotel units in March 1975 were under management contracts with American companies. Both foreign investments in agriculture are under American management. While it is too early to determine the economic success of foreign real estate investments indications are that American managed investments in resort facilities are more successful than foreign managed investments. They have the advantage of experience and a network for attracting tourists and include a number of the better known hotels.

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9 / U. S. Senate. Hearings before the Subcommittee on Foreign Commerce and Tourism of the Committee on Commerce. Impact on Foreign Investment in the U. S. 93rd Congress, 1st Session, Honolulu, Hawaii, December 27 and 28, 1973.

10/ Johnston, Richard W. "The Japanese have Hit the Beaches in Hawaii," Fortune Magazine, September, 1975.

11/ Honolulu Advertiser, October, 1973

Two foreign owned hotels have recently gone out of business, and one subdivision is facing the possibility of a tax sale. Several other foreign investors may also liquidate their investments. Both small and large foreign companies have had difficulties. Contributing factors have been high costs of construction and operation, and an oversupply of condominium units and subdivisions lots. Foreign investors face the added burden of lack of experience in Hawaii, high prices paid (sometimes for marginal properties), and, in the case of some Japanese investors, limitations on trasfer of funds from the home country. Limitations on release of foreign exchange for overseas real estate investment were imposed by the government of Japan in 1974.

The Outlook for Future Foreign Real Estate Investments

A lessening in future foreign real estate investments is indicated by lower economic growth rates and less favorable trade balances anticipated for Japan, and the low priority given to leisure-oriented foreign investments by the government of Japan. Additional factors are unfavorable returns, and adverse public reactions that have characterized some Japanese real estate investments in Hawaii. Prospects for foreign real estate investment in the immediate future are further diminished by the recent recession. Visitor arrivals in Hawaii grew by about 5 percent in 1974 and 1975 compared to 17 percent in 1973.

Despite awareness of the above mentioned limitations, the Boston Consulting Group projects considerable further Japanese real estate investment in both Hawaii and Guam, with a shifting from Oahu to the Neighbor Islands. A gradual migration and concentration of Japanese investment is also expected in Alaska and on the West Coast, building to a total asset value of Japanese-controlled investments in U. S. real estate of about $1.3 billion in 1980, with a Japanese capital input of $400 million. Some $600 million would be tourism based, $600 million would constitute property development, and $100 million would represent real property investment for personal use. 12/ Cited in support of this view are the pressures of continued economic growth and rising income against the limited land area in Japan. Some evidence supporting this view is the $150 million or so of Japanses real estate investment initiated in Hawaii in the last half of 1974, well after the onset of the "oil crisis." Of course, not all plans are realized. However, the view projected of investments from Oahu to the Neighbor Islands is supported by major development plans for Japanese acquired lands with resort potential.

In assessing future real estate investment in Hawaii, it would be a mistake to focus exclusively on Japanese investors. Future investments are likely to come from Oceania, Canada, and some developing Asiatic nations. The security and stability of the United States and a hospitable state policy are likely to attract such investment.

In summary, it is most unlikely that the rate of foreign real estate in Hawaii from 1972 through 1974 will be maintained. However,

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12/ The Boston Consulting Group, op. cit., pp. 193-200

looking towards the next two decades, it is likely to continue at a more moderate pace, and to be somewhat more diversified both in types and geographically. Responding to state policies as well as past experience, future foreign real estate investments will be based on more careful planning. A large proportion will be joint ventures or American managed.

The Concern with Foreign Investments

With a slowdown in foreign investments in Hawaii, the concerns have abated. Yet perhaps the most significant findings of this study come from an examination of the period of rapid rise in foreign investment. No end seemed in sight and concerns ran high. The lesson learned is that the defenses against potential adverse effects of foreign investments are unlikely to be found in rapid passage of laws and regulations dealing with that specific issue. The more basic defense lies in the adequacy of the existing body of laws and institutions, the caliber of leadership in the community, and open lines of communications to foreign investors and their governments.

It is revealing that the major concerns identified did not relate to land uses such as encroachment of shorelines or of agricultural areas, or public expenses for servicing foreign developed subdivisions. These problems had already been faced with domestic real estate development; and the state and counties have the means of dealing with them.

A public opinion survey conducted on Oahu near the end of 1973 revealed a favorable attitude towards investment in Hawaii, but considerable reservations about more Japanese investments. 13/ A more comprehensive statewide poll taken in October 1975 found that 49 percent of the public believes that it is important for Hawaii to attract investment money from foreign countries while only 10 percent felt that attracting foreign capital was unimportant. 14/ Preferred fields for future foreign investment are education, science and research, and agriculture. Yet an overwhelming majority of the repondents, about 90 percent, indicated that some types of foreign control was needed. The types of controls most frequently indicated were prohibition of foreign investment in land, limitation to less than 50 percent ownership of any one land parcel, limitation of foreign ownership of any business to less than 50 percent, and prohibition of foreign investment in certain types of business such as utilities.

Data are unavailable on the reasons for the public desire for controls of foreign investment. One likely reason is fear of economic or political control by foreigners. This analysis finds no grounds for such fears. Another likely reason is a feeling that land is a fundamental resource which sould not pass into foreign hands. This viewpoint may not be based on solely economic considerations. To the extent that this view has an economic basis it would be that despite high prices paid by foreign investors,

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13/ Heller, H. R. and Heller, E. E., op. cit., pp. 107-124

14/ State of Hawaii, What Hawaii's People Think of Foreign and Mainland Investment in the Islands. Results of a Public Opinion Poll taken October 5-15, 1975, Hawaii International Service Agency, Department of Planning and Economic Development, November 1975

land is undervalued in social terms. In the long term future, beyond the planning horizon of the individual investor, it is possible that the value of land will be far beyond what is presently envisioned. It is doubtful that this concern can be tested against facts; no one can tell what land prices in Hawaii will be a century from now. Whether to act on public concern by imposing controls on foreign investment goes beyond solely economic considerations and must be decided by policymakers. However, caution is indicated. Various types of controls would need to be evaluated for feasibility of enforcement and consequences on flows of foreign investment capital, particularly in agriculture where foreign investment is desired but where considerable land inputs are required. From a national viewpoint, the consequences on American overseas investment would need to be considered.

At the December 1973 hearings of the Senate Subcommittee, the views of state officials, business, civic and labor leaders, and representatives of the press reflected a generally positive view of foreign investment in Hawaii. Only one witness favored legislation to limit foreign investment and that attitude was directed at land ownership. Other witnesses were against legal restrictions on foreign investments, but nearly all registered some concern. In 1974, five bills introduced in the state legislature were aimed at monitoring and regulating all investments; they would not prohibit foreign investments. None of these bills passed. The only legislation enacted concerned disclosure of organization sources of funds, and plans associated with out-of-state take-over bids of equity securities of firms incorporated under the laws of Hawaii. 15/

During the December 1973 hearings of the Senate Subcommittee on Foreign Commerce and Tourism concerns were expressed regarding future adverse effects of foreign investment. These effects have not materialized. Other concerns were over unfavorable developments believed to be in progress but which, on closer examination, could not be substantiated. Nevertheless, the hearings record is a remarkable document. It provided knowledge and perspective on existing foreign investment. It informed both the community and foreign investors of Hawaii's needs, and alerted both of these groups.

The concern could be summarized as "enclave economy," locally referred to as "closed systems." A second concern was foreign control of a substantial part of the tourist industry to the point where it would lose the "Hawaiian atmosphere," with severe economic consequences.

The concern over enclave economy was expressed as follows by one witness:

> It is estimated that approximately 50 percent of our Japan tourists travel in a closed containerized program, that is: arrive via Japan Air Lines, utilize Japanese owned hotels, buses, restaurants, shops, and travel tours. 16/

15/ Session Laws of Hawaii, Act 47, Approved May 24, 1974

16/ U. S. Senate, Hearings before the Subcommittee on Foreign Commerce and Tourism, op. cit., p. 51

In 1972, some 80 percent of Japanese tourists to Hawaii came in tour groups and 78 percent used Japan Air Lines. 17/ In May 1974, 75 local businessmen signed a petition complaining against unfair operators of tours for foreign visitors. 18/ However, this appears to be an isolated case, and the weight of the evidence is against the existence of a "closed system."

After a survey of travel bureaus in May 1975, a daily newspaper, the Honolulu Advertiser, concluded that the Japanese do not run a "closed shop" in Hawaii. This was also the judgment of two prominent officials of the Hawaii tourist industry, a leader of the business community, and the representative of a major Japanese investor. According to the latter, competition is on the basis of what the supplier of tourist services has to offer. This statement is supported by a study of the Japanese travel industry. This industry, although dominated by seven large firms, retains a strong element of competition. 19/ In Hawaii, concentrations of Japanese tourists can be found in American owned as well as Japanese owned hotels.

An aspect of the "closed system" has been the exclusion of local people, especially from foreign owned golf courses. There is only one known case of attempted exclusive sale of Hawaii golf membership in Japan. In this case, the policy was reversed by a combination of public pressure, lagging membership sales, and finally by a ban on the sale of membership in Hawaiian clubs by the government of Japan, which showed concern for harmonious business relationships with Hawaii. 21/ An announced policy of exclusive sales in Japan for a condominium was also reversed after adverse reaction, and referral to the U. S. Department of Housing and Urban Development. While it may be exacerbated in the case of foreign ownership, exclusion of the general public from privately owned recreational areas is not a new issue in Hawaii or other tourist destinations.

Several witnesses mentioned a further aspect of the "closed system"--that foreign investors in tourist facilities brought or planned to bring in their own nationals for employment. A 1973 survey of Japanese owned firms with more than 50 employees found that 6.2 percent of the workers were foreign nationals. Close to 86 percent were American of Japanese descent. 21/

17/ U. S. Department of Commerce, A Study of Japanese Travel Habits and Patterns, U. S. Travel Service, Office of Research and Analysis, Vol. 2., March 1974, p. 28,30.

18/ Honolulu Advertiser, May 2, 1974

19/ U. S. Department of Commerce, A Study of Japanese Travel Habits and Patterns, op. cit., Vol. 1

20/ Government of Japan, Hawaii's Reaction to Japanese Investments in the Islands, An Assessment, Ministry of Foreign Affairs, May 1973, Translated and Published by the Hawaii International Services Agency, Department of Planning and Economic Development, State of Hawaii, September 1973.

21/ Heller, H. R. and Heller, E. E., op. cit., p. 105

A resurvey of employment practices was beyond the scope of this study. A representative of a group of American managed hotels, accounting for 63 percent of all Japanese owned hotel units, stated that these hotels employed only three foreign nationals brought in from Japan (although other foreign nationals may have been hired locally) and that there was no preferential hiring of any ethnic group.

Concern over loss of the "Hawaiian atmosphere" was not borne out. A survey reported by the Honolulu Star Bulletin in July 1974 found that only 1.1 percent of visitors to Hawaii complained about the Japanese presence. 22/ There have been some allusions to World War II, but this attitude is not representative. A review of 229 favorable and 129 critical survey responses by Japanese tourists identified only three complaints about anti-Japanese attitudes or discrimination. 23/ Interestingly, 11 responses were critical of fellow Japanese tourists or said there were so many Japanese visitors that the respondent did not have the feeling of having left home. Both favorable and unfavorable comments reveal that Japanese visitors are highly sensitive to the main ingredients of the "Hawaiian atmosphere": natural beauty and its preservation, a leisurely pace, and cordial personal contacts.

Since the question of foreign economic control of the Hawaii tourist industry has been raised and an antitrust investigation of a major foreign hotel acquisition was initiated, the issue should be addressed. The issue is addressed in this paper from an economic rather than a legal basis. Economic control is defined here as the ability to control prices charged for tourist accommodations in Hawaii through control of a substantial portion of tourist accommodations in the state.

Economic control is limited by competition, both within Hawaii and between Hawaii and other tourist detinations. If one owner were to control all tourist accommodations in Hawaii, his prices would be limited by the need to keep the cost of a total vacation package competitive.

Hawaii has, in fact, many separately owned tourist accomodations. Each offers similar but not identical services. The largest single owner, a foreign investor, accounts for 12 percent of all hotel units in the state and for 19 percent of all units in Waikiki. In such a situation, each owner will stress the particular advantages of his facility, but his latitude to raise prices is limited by what his competitors charge. Competitors may agree to charge "fair prices," but such prices cannot be much above what would be without agreement. A decrease in tourist volume, the temptation to break the agreement, the entry of new competitors would prevent this.

22/ Honolulu Star Bulletin, July 1974.

23/ Richardson, Evelyn K. and Donehower, Ernest J. Japanese Visitor Opinion Survey, Fall Season 1973, Hawaii Visitors Bureau, Research Department, January 1975.

It is more difficult to evaluate the possibility of limited control of a segment of the tourist market. This segment is the beachfront in Waikiki. Over half of the beachfront accommodations are owned by one Japanese investor and managed by the Sheraton Corporation. Although no final judgment is offered, here are some facts. First, if the investor wants to raise prices for his accommodations above what prices would be under numerous small ownerships, he would need to withhold part of his accommodations. Whether it would be profitable for him to do so is not known. Unless such an owner colludes with other owners of beachfront properties, he would accrue all of the costs of limiting the supply, but only a portion of the benefit of higher prices. Second, to the extent he succeeded in augmenting profits by such control, the rental value of the site would increase. A portion of the beachfront accounting for some 20 percent of the foreign owned accommodations is leased from a major Hawaiian landowner.

Reconnaissance of Economic Impacts

This section discusses the possible impact of foreign real estate investments on levels and distribution of income in Hawaii. Some judgments are also made on national impacts.

There are several ways in which foreign investments can affect income earned in a local community. One is to provide capital needed to serve existing or expanding markets. A second way is to provide not only capital but also to increase the demand for the products by developing new markets. A third way is to provide, along with the capital, improved technology and more efficient production methods. A fourth way is to develop new products or services not previously produced. In the case of Hawaii, foreign real estate investment has primarily provided the capital to serve existing and expanding markets in tourism, in housing, and in agriculture. Foreign investment may also have increased travel to Hawaii by foreign nationals through more effective promotion in foreign markets.

The assumption here is that foreign investment has added to the total capital inflow to Hawaii. In a world of perfect knowledge and absence of uncertainty, capital to fund any enterprise would be available as long as returns are sufficient to cover the market rate of interest. At least one economist has suggested that Hawaii's capital requirments in recent years have been adequately met by domestic sources. However, opinions of well informed persons, as well as the state's efforts indicate that without foreign capital, total investments in Hawaii would have been smaller. 24/

A distinction should by made between capital inflows to take over existing enterprises and capital used to establish new enterprises. If foreign capital is used to acquire a business from an out-of-state owner, there is no direct effect on income earned in Hawaii although funds to the nation that are available for investment have increased.

24/ U. S. Senate, Hearings before the Subcommittee on Foreign Commerce and Tourism, op. cit., pp. 23, 25.

The results are less clear-cut when foreign capital is used to acquire a locally owned business. Here, income effects depend on whether the previous owner retains in Hawaii the funds he received. The answer to this question goes back to the degree to which lack of knowledge and uncertainty have impeded capital flows and funding of investment opportunities in the state.

Of the total of $517 million of foreign real estate investment that was identified in Hawaii, some $376 million represents take-overs. Of this amount $261 was take-overs from out-of-state owners, $72 million was take-overs from local owners, with $43 million of take-overs not identified as to location of owner.

On the basis of rough approximation based on tax records, the $376 million of take-overs represents land owned by foreign investors valued at $182 million: $80 million in hotel sites and golf courses, $72 million in subdivisions and vacant tracts, and $30 million in agricultural lands. The balance of $194 million between the total of $376 million of take-overs and $182 million value of lands purchased represents mainly take-over of improvements but also includes capitalized value of leases transferred to foreign lessees and such intangibles as "good will."

Some $141 million of foreign real estate investment in Hawaii was new construction of condominiums, hotels and office buildings. This total includes site value of lands purchased. The estimate is low, since it excludes expenditures for major additions and renovations of resort hotels acquired by foreign owners. Further, judging from the plans for development of some of the vacant land tracts, the total could well rise to $200 million. The Hawaii Inter-industry Study estimates from an input-output model that $1 million of construction generates $892,000 in income for Hawaiian households. This amount includes the income earned directly from construction and indirectly from businesses related to construction, as well as income from successive rounds of consumer spending induced by earnings in construction and related businesses. Assuming a total construction outlay of $200 million, income to Hawaiian households would rise by $178 million. Additional income would accrue in the form of undistributed profits to Hawaii corporations.

Income generated from construction is a one-time occurrence. Annual income increases arise from sales of goods and services in Hawaii that would not have taken place without foreign real estate investment. These include sales to out-of-state residents, such as tourist services and agricultural products. Annual increases in income are also generated if foreign real estate investments induce local people to make more of their annual consumption expenditures within the state. They may, for example, spend their vacations on second-home developments on the Neighbor Islands rather than out of state.

It is not possible to determine the amount by which annual income earned in Hawaii was augmented by foreign real estate investment because it is not possible to establish how much more domestic capital would be invested in Hawaii if foreign real estate investments had not been made. For example,

as of March 1975 some 23 percent of all hotel units in the state were foreign owned. Allocating 23 percent of the $1,070 million of tourists expenditures in the state in 1974 gives an annual rate of about $246 million total expenditures by tourists staying in foreign owned hotels. Direct, indirect, and induced income earned by Hawaii households from this amount of tourist expenditures is estimated at nearly $200 million. 25/ However, the amount by which Hawaiian income was increased by foreign hotel investments would be only a fraction of this figure, since some 80 percent of foreign owned hotel units represent take-overs of existing units.

In terms of incidence of economic effects, sellers of real estate to foreign investors have generally benefited. Landowners have benefited through appreciation of land values induced directly by additional demand for land by foreign investors, and indirectly through growth of population and economic activities induced by foreign investments. State revenues have risen because of increased land values. Growth in the tourist industry raised state revenues by more than state expenditures. 26/ Construction-oriented businesses and their employees also benefited. Foreign real estate investment has also stabilized the sugar industry on the Island of Hawaii at a time when large capital investments were needed for modernization and compliance with environmental protection laws. Employment in a new agricultural enterprise was also provided in North Oahu, where a sugar plantation has gone out of business. To a more limited extent, many business owners and employees, directly and indirectly related to the tourist industry have benefited. There is a considerable oversupply of condominiums. Investors in such properties were adversely affected by some $98 million of foreign and joint U. S.-foreign financed condominium construction. 27/

The general public has incurred both beneficial and adverse effects from foreign investment. More public services can be provided with increased state revenues. Opportunities for employment, investment, and the range of consumer choices have increased. Adverse effects are increased congestion, pressure on the environment, and higher land prices.

For the national economy, one obvious short-run effect is acquisition of foreign exchange for international payments. In the long run, the inflow of foreign exchange is likely to be exceeded by outflows through repartiation of earnings from foreign properties. In the case of Hawaii, where there has been considerable "plowing back" of profits and there are major investment plans for foreign-owned lands, the time when the accumulated total of repatriated earnings exceed the total of capital inflows is likely to be in the distant future.

25/ State of Hawaii, The Impact of Tourism on the Hawaii Economy. Research Report 75-2, Research and Economic Analysis Division, Department of Planning and Economic Development, July 1975.

26/ Mathematica, The Visitor Industry and Hawaii's Economy. A Cost-Benefit Analysis. Prepared for the State of Hawaii Department of Planning and Economic Development, February 1970.

27/ Pacific Business News, Honolulu, September 29, 1975

If foreign investment occurs at a time of rising unemployment, idle labor may be put to work by foreign investments, wither directly or indirectly. This seems to have been the case in Hawaii, where unemployment rose from 6 percent in 1972 to 7.6 percent in 1974, the period of foreign investment growth. Without foreign investment, unemployment would have been higher.

In the long run, national productivity and wage levels will be increased through augmentation of investment funds. This augmentation could approximate the total inflow of capital in Hawaii, since the funds acquired from take-overs of established concerns become available for investment on a national basis.

Lessons Learned by the United States

The conomical, social, and environmental effects of foreign real estate investment in Hawaii have been similar to American real estate investment in Hawaii. Therefore, the basic defenses against adverse effects are not specifically directed at foreign real estate investment but are applicable to all real estate. In Hawaii, these are the State Land Use Law, which controls major land uses on a statewide basis, county zoning and regulations, which control specific land uses within major categories established by the state; building permits; subdivision regulations; and property assessment and taxation. These provide the framework for insuring that foreign real estate developments are consistent with Hawaii General Plan.

During a period of rapid buildup in land acquisitions and real estate development by foreign companies, there is natural public concern and sentiment is likely to favor controls, particularly of foreign land acquisitions. What is needed for enlightened debate and planning is authoritative factual information and the capacity to analyze potential consequences. This requires an efficient system of recording property transfers, including sale prices and mortgages, and realistic property appraisals for tax purposes. The latter is largely met by the Hawaii Department of Taxation, which records real estate transactions and appraises property values on a statewide basis. Factual information on foreign investments is provided by the record kept by the Hawaii International Service Agency of the Department of Planning and Economic Development. This record would be somewhat improved by closer cooperation between the Hawaii International Services Agency and the Department of Taxation. Factual information obtained at the state level should be forwarded to the appropriate Federal agencies to provide a more comprehensive picture for decisions at the national level.

Lessons Learned by Foreign Investors

The need for the best possible pre-investment analysis seems too obvious to mention. Yet this requirement was apparently not met in the case of some foreign real estate investments. This evidence extends not only to the strictly financial aspects, but also to pre-investment analysis of local impacts and of public reaction that may determine the viability of investment plans. Real estate investment experience in the home country of the investor is not fully applicable to U. S. conditions. A full

review of investment plans with local officials might have avoided adverse local reaction and losses by some investors. American management or joint U. S.-foreign ventures are additional ways in which the foreign investor can benefit from local experience.

Summary and Conclusion

Total asset value of foreign investment in Hawaii stood at approximately $600 million in 1975, with the bulk of the investments occurring from 1972 to mid-1975. Some two-thirds of foreign investments are Japanese. Asset value of foreign real estate investment is estimated at $517 million, mostly in resort hotels, condominiums, subdivisions, and land tracts with resort or subdivision potential and sugar plantations. This investment pattern is similar to that of American owned real estate investments in Hawaii. Local impacts have been favorable but limited, since some $376 million of the total foreign investment in real estate represents take-overs of existing establishments. Prices paid by foreign investors were high and contributed to the upward trend in land prices. To date the record for foreign investors is mixed, with some successes and some failures. For the long term future, the outlook is for continued real estate investment in Hawaii, but on a smaller scale than in the recent past. To appraise potential future impacts of foreign real estate investments more research is needed on motives and expectations of foreign investors.

In a period of rapid rise in foreign investments, especially in land and high visibility real estate, local concerns will run high. Opinion polls indicate that nearly half of Hawaii's people believe that foreign capital is important to the state. However, about 90 percent favor some type of controls on foreign investment and a substantial portion favor limitation of foreign land ownership. This study finds no danger of foreign control. There is the possibility that despite high prices paid, land is undervalued for the long term future, but this is an uncertain judgment. The case for controls on foreign real estate investment is not clear-cut. The issue should be approached cautiously, and consideration given to feasibility of enforcing various types of control, and likely consequences on foreign investment and national implications. Joint U. S.-foreign ventures should be encouraged.

The basic defense against adverse effects on foreign real estate investment is a well articulated state and county land use policy, and the means to implement it. For enlightened debate on foreign real estate investment issues authorative information is needed on amount and types of foreign investments. This requires uniform property assessments and a recording system for property transfers from which data on ownership, prices paid, and mortgages can be readily extracted. Hawaii was well served by its state and county agencies in developing land use policies and controls, real estate records and assessments, and information of foreign investment. Continued reappraisal of these activities and collaboration of the Department of Taxation and the planning agencies is indicated.

FOREIGN INVESTMENT IN RURAL LAND OF TEXAS AND THE SOUTHWEST

Ivan W. Schmedemann*

Introduction

The major redistribution of wealth currently emerging within the world complex of countries has intensified concern that at least part of this wealth will be reinvested in rural land in the United States. If a significant movement of foreign funds into rural America were to occur it would impact the agricultural sector and rural communities. The potential impact from such investments will be developed within the framework of what is currently known about existing and developing rural land markets in the Southwestern United States with particular emphasis on Texas.

The Southwestern region of the United States can be expected to interest an increasing number of foreign investors for some rather specific reasons.

1. Large land holdings are currently available in the regional market which tend to reduce the transaction costs[1/] of aggregating land units for large investors.
2. Land values in many areas of the Southwest have not been closely related to the returns from agriculture since World War II; this trend has been accelerating; it has resulted in a rather steady rate of appreciation which attracts certain types of investors.
3. Historically, property taxes have been relatively low compared to other areas of the United States.[2/]
4. Texas, in particular, has an unusually dynamic economy and a

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1/ Both public and private transaction costs are discussed in detail in a paper by Gene Wunderlich, "Who Owns America's Land: Problems in Preserving the Rural Landscape", Economic Research Service, U.S. Department of Agriculture, Washington, D.C., March, 1974.

2/ Jerome M. Stam and Eleanor L. Courtney, Farm Real Estate Taxes, RET-13, Economic Research Service, U.S. Department of Agriculture, Washington, D.C., March, 1974.

generally positive attitude prevails with respect to growth and development; also, there are a minimum of regulations concerning the use and disposition of land resources. This situation appeals to many land investors.

5. The Southwest has a certain romantic aura, even in the minds of foreigners; also many potential investors from oil producing nations are familiar with the area because of linkages with the oil industry. Both of these factors will enhance the area's position as a viable investment alternative.

In Texas some isolated tracts of rural land have been purchased by foreign investors, the amounts to date have been so small as to have had virtually no impact;1/2/3/ so economic effects will be expressed as hypothetical projections. Urban fringe properties, developmental properties, lot-sized rural sub-divisions and other related real estate developments are quite a different market and have been omitted from this analysis. The remaining rural land includes most of the major agricultural areas of the Southwest. Although the analysis is focused on the Southwest some of the relationships are applicable to other sections of the country.

Dichotomy of the Rural Land Market

Currently in Texas, there are two major demand sectors in the rural land market: 1) buyers of land for production purposes, and 2) buyers of land for consumption purposes. Another demand sector is developing on the periphery of the market; it is based on a different purpose for ownership. These buyers, products of double-digit inflation, are relatively new to the American rural land scene. They are purchasing land to conserve accumulated wealth or as a hedge against inflation and probably are more concerned about the asset's potential for long term appreciation than its short term cash flow capability. This demand sector is further sub-divided into 1) domestic and 2) foreign buyers. Thus, four separate land markets have been characterized on the basis of purpose of ownership: 1) production market, 2) consumption market, 3) domestic inflation market, and 4) foreign inflation market.

1/ Ivan W. Schmedemann, et al., "What's Happening to Rural Land Values", Texas Agricultural Progress, Vol. 20, No. 1, Texas A&M University, Winter, 1974.

2/ Linnea Bernard, "Foreign Investment in the United States: Is America for Sale?", Houston Law Review, Vol. 12:661, 1975.

3/ "Direct foreign investment in all sectors of the U.S. economy apparently accounts for only 1 percent of the total dollar value of domestic assets. No specific data are available for the food and fiber system, and consequently, no estimates have been made of the magnitude of foreign investment in this sector." Kenneth R. Krause, Foreign Firms with Investment in the U.S. Food and Fiber System, AER 302, Economic Research Service, U.S. Department of Agriculture, Washington, D.C., November, 1975.

Production Market

The production market is the traditional market for agricultural land. The value of such land is closely related to the net returns from agriculture; as a result, any variations in net returns to the land eventually will be reflected in a corresponding change in the market value of the land markets as was demonstrated in the recent past, (1973-75),1/ when production land values skyrocketed as the increased profits, fueled by optimism, were capitalized back into land values. Since the value of the land depends on its productivity, real estate loans are, in many agricultural regions, still related to the quality of the land or to a certain extent are "land-based".

Consumption Market

Consumption land is purchased primarily for its non-monetary utility value to the owner.2/ And, since the value of consumption land is not tied closely to the net returns from the land, changes in values are caused largely by conditions in the general economy, namely, those affecting consumer disposable income, leisure time and mobility. Historically, this market has not experienced wide fluctuations, rather, it has been characterized by a generally upward rate of appreciation. Because of the nature of land values in this market, loans have become much more "man-based".3/ The productive capacity of the land in most cases is relatively insignificant in establishing loan values.4/

Inflation Market

Double digit inflation and general economic uncertainty in the United States and elsewhere in the world has caused many investors and owners of accumulated wealth to rethink their financial strategies for the future. Despite liquidity problems associated with landownership, land,

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1/ Robert D. Reinsel and John F. Jones, Farm Real Estate Market Developments, CD-80, Economic Research Service, U.S. Department of Agriculture, Washington, D.C., July, 1975.

2/ Ivan W. Schmedemann, "Discussion: Definition and Criteria for Identifying Prime Lands That Serve Other Than Food and Fiber Production Purposes", Perspectives on Prime Lands, U.S. Department of Agriculture, Washington, D.C., July, 1975.

3/ Ivan W. Schmedemann, et al., "Recreation--A Consumptive Use of Land in East Texas", Texas Council of Chapters, Soil Conservation Society of America, July, 1971.

4/ James F. Faubion, Analysis of the Effects of Consumptive Uses on the Value of Rural Land, Unpublished M.S. Thesis, Texas A&M University, December, 1971.

historically, has been one of the more viable hedges against inflation.1/ Rapid gains in rural land values during 19732/ and especially in the first half of 1974, at a time when the performance of alternative investments was not good, stimulated new interest in the potential of rural land investments.3/

Independent farms have dominated the American scene through time, however, during the last 10 years their dominance has been increasingly threatened through direct agricultural production by firms with primary business interests outside of farming.4/ The inflation market will reinforce this trend since the major portion of funds can be expected to come from non-agricultural sectors of the economy. Leverage and finance generally will not be important to those who buy properties for inflation purposes since the goal is to protect accumulated wealth from erosion by high rates of inflation.5/6/ As the inflation demand for rural land rises, the market value of rural land increasingly will become removed from the imputed value based on agricultural productivity. The additive effect of inflation buyers in the market can be observed by the fact that the spread in per acre values between large and small

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1/ The "inflation market" depends on a relatively high rate of inflation over time, for example, 10 percent per year or higher. And, a high level of inflation is an assumption of this paper. The supporting reasons for assuming a high rate of inflation are: a long run capital shortage, energy costs, political sensitivity to unemployment problems, large deficit spending at all levels of government, and international interdependence.

2/ Ivan W. Schmedemann, et al., "Rural Land: Market in Transition", Texas Agricultural Progress, Vol. 20, No. 3, Texas A&M University, Summer, 1973.

3/ Ivan W. Schmedemann, et al., "Dynamics of the Rural Land Market", Texas Agricultural Progress, Vol. 20, No. 4, Texas A&M University, Fall, 1974.

4/ Don A. Reimund, Farming and Agribusiness Activities of Large Multiunit Firms, ERS-591, Economic Research Service, U.S. Department of Agriculture, Washington, D.C., March, 1975.

5/ It is realized that inflation will be an "add-on" reason for many buyers from the non-agricultural sector who traditionally have been concerned with such value determinants as the amount of annual net income availability of financial leverage and the opportunity for tax avoidance. For discussions of these aspects see articles by Philip M. Raup, "Nature and Extent of the Expansion of Corporations in American Agriculture", Staff Paper P75-8, April, 1975 and "Effects of Agrarian Reform in the United States on Land-Use Policies and Planning", Staff Paper P75-20, September, 1975, University of Minnesota.

6/ No distinction is made at this point between domestic and foreign buyers of rural land.

tracts is narrowing;1/2/ in some regions, the rate of appreciation in values is higher for the larger properties than for the smaller ones.3/4/ Historically, it has been necessary for appraisers to adjust for size when estimating values for comparable properties within a region; the size factor is less important now than it has been in the past.

Goals of Landowners

An understanding of the goals of landownership is important in determining how land resources will be used and to what end. Unfortunately this is another area in which very little quantifiable data are available.5/ Certainly those who own the property rights will, over time, determine how these rights will be used.

Selected goals of landownership have been evaluated with respect to the different land markets in table 1. The very nature of the inflation market for land suggests that both foreign and domestic buyers would be vitally interested in the capacity of rural land to conserve and store accumulated wealth. The consumptive buyer is concerned with the conservation of wealth but places considerably less emphasis on this factor. Farmers and ranchers who own production land are interested in it not

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1/ Robert M. Ronnau, An Analysis of the Dynamic Land Market System in the Edwards Plateau of Texas, Unpublished Ph.D. Dissertation, Texas A&M University, Spring, 1976.

2/ Small tracts are acreages of sufficient size to be operated as agricultural units.

3/ This situation is more prevalent in ranching areas.

4/ Value determinants, other than pressure from inflation buyers, generally have not exerted an upward pressure on the land market during most of 1974 and 1975. For example, the returns from beef cattle enterprises in ranching areas have taken a significant downturn, real estate credit has remained costly, the opportunities for high leverage have diminished somewhat as problems have developed with real estate syndications in urban fringe areas and the regulations affecting tax avoidance have remained relatively unchanged. On the other hand, conversations with real estate knowledgeables suggest that large tracts are clearing the market at a faster rate than are small units; this indicates increased pressure in the market for large land units. A synthesis of these factors tends to support the hypothesis that inflation, increasingly, is a strong contributing force in the market demand for rural land.

5/ Wunderlich observed, "Research might do much to uncover the human drives to own, possess, hold and control territory or the right to make some decisions about its use. We are far from a complete understanding about the reasons for landownership." Gene Wunderlich, "Who Owns America's Land: Problems in Preserving the Rural Landscape", Economic Research Service, U.S. Department of Agriculture, Washington, D.C., March, 1974.

Table 1--Types of rural land markets related to goals of landowners, Texas, 1976

Goals of landowners	Existing land markets		Developing land markets	
	Production	Consumption	Inflation domestic	Inflation foreign
Store of wealth	+	- +	+ +	+ +
Annual cash flow	+	-	- +	- +
Provide a living	+ +	-	-	-
Rapid rate of land appreciation	- +	- +	+ +	+ +
Non-monetary purposes	-	+ +	-	-
Tax avoidance	-	+	+ +	+ +

Importance of goal to landowner: - not important; - + may be of some importance; + important; + + very important

only for income but as a store of wealth.1/ Cash flow goals will not be as important for inflation buyers. Naturally, any investor would like to have both a rapid rate of appreciation and a strong cash flow. However, inflation buyers by virtue of the purpose of the investment are not deeply obligated to the retirement of debt on highly mortgaged land.

Individuals and family operations2/ account for the largest group of production landowners; they depend on the land as a primary source of family income. Owners of consumption and inflation land are, for the most part, absentee landowners; they do not rely on the income from the land as a means of support. The consumption landowner is most interested in the non-monetary utility generating capacity of the land; the other three categories of landowners place the various economic considerations first. A rapid rate of land appreciation is extremely important to both the domestic and foreign landowners.3/ Also tax avoidance is an important factor of consideration for almost all large investors. The goals of foreign inflation landowners will be very similar to those of domestic origin, therefore, their entry into the land market merely expands the inflation market and its accompanying effects--both positive and negative.

Effects of Differentiated Land Markets

Rural Communities

The purpose of landownership determines the land use in a region; and, the type of land use has a direct impact on the number and kind of rural residents and the economic viability of the rural community. The future of rural communities essentially depends on the land use of a region.

Small rural communities have experienced a general decline in economic viability and in population numbers throughout much of the Southwest since World War II. Vast technological advances during this period transformed agriculture into a highly efficient, capital intensive industry. This transformation released large quantities of labor and at the same time increased productivity. Farms were consolidated at a rapid rate followed closely by the consolidation of rural communities.

1/ The life philosophy prevalent among many elderly rural residents was that they needed to accumulate enough wealth to provide for that period in life when they were unable to work and also to leave an estate for their children. As a result of this philosophy the often repeated statement of "lived poor and died rich" and "was land poor" were associated with rural people.

2/ Bureau of Census, 1969 Census of Agriculture, U.S. Department of Commerce, Washington, D.C.

3/ The rate of land appreciation, to be acceptable to inflation land market buyers will have to be equal to or greater than the long run rate of inflation for the U.S. economy.

The consolidation of rural communities continued until the late 1960's when the trend began to reverse in areas where the consumption land buyer became a major force in the land market. The buyers, at first, were transitory1/ residents in that they lived in the areas during weekend and holiday periods. Later on these landowners retired or obtained new jobs in the rural areas where they became permanent residents and many small rural communities began to grow.

Table 2 indicates the probable effects that different types of land markets and the related land use will have on rural communities. Direct investment in rural land by foreign nations generally will have a negative impact on rural communities. Under developing land markets, both the foreign and domestic inflation land markets, essentially have a negative impact on the levels of investment, employment and population all of which are ingredients of economic growth. Almost all of the owners of inflation land are absentee owners; with little incentive to invest in rural communities. Agricultural inputs for large operations will generally be purchased from large regional service centers and in some cases directly from the manufacturers. Therefore, total expenditures in the rural areas will be low; this fact combined with low multipliers and high leakages rates2/ which are typical for rural areas leaves little optimism for added economic activity.3/ Rural community consolidation can be expected to continue under these circumstances.

If large areas of rural land eventually are accumulated by absentee owners, major shifts in the traditional agricultural sector can be anticipated. The control of agriculture may in fact shift out of the rural areas and a new set of policies will be developed to conform with the goals of the new owners of rural land resources. Current inheritance laws, if not changed, will accelerate this process through time as individual and family owners of farms and ranches are forced to liquidate property to pay estate taxes. Trusts, corporations, tax exempt religious groups and other such financial entities may eventually own most of the U.S. capacity to produce food and fiber.

Rural communities will tend to fare better under the owners of production and consumption land than they will under owners of land purchased for inflation purposes. Local political and social structures will change with the influx of consumption owners from the cities, the opportunities for economic growth will increase. This is the current trend in Texas.

1/ Ivan W. Schmedemann and Alvin B. Wooten, "Land--A Consumer Good?", Texas Agricultural Progress, Vol. 19, No. 4, Texas A&M University, Fall, 1973.

2/ Charles M. Tiebout, The Community Economic Base Study, Sup. Paper No. 16, Committee for Economic Development, New York, December, 1962.

3/ Ivan W. Schmedemann and John G. McNeeley, "The Impact of Recreation on Local Economies", paper, Western Agricultural Economic Assn., Las Cruces, New Mexico, July, 1967.

Table 2--Rural land markets, categorized by purpose of ownership, and their probable effects on rural communities, Texas, 1976

Effects on selected variables	Existing land markets		Developing land markets	
	Production	Consumption	Inflation domestic	Inflation foreign
Increase economic growth	- +	+	-	- -
Increase population	-	+	-	-
Increase local investment	- +	+	-	- -
Stimulate employment	- +	+	-	- -
Increase demand for public services	- +	+ +	-	-
Increase the consolidation of rural communities	+	-	+	+
Increase shift of political control out of agriculture	-	- +	+ +	+
Change present social & political structure	- +	+ +	+	+

Degree of effect on communities: - - large decrease; - some decrease; - + little change, may be either way; + some increase; + + large increase

Agricultural Sector

The productivity of U.S. agriculture is one of the miracles of the 20th century. In spite of a 30 year U.S. foreign policy of free distribution of American agricultural technology, no foreign country to date has been able to develop a system that even approaches the efficiency of American farmers and ranchers.1/ Rising food costs and the threat of shortages have caused American consumers and others who are highly dependent upon U.S. food supplies to have a keen interest in the continued productivity of American agriculture. Therefore, the introduction of new variables which conceivably could negatively disrupt the equilibrium of the agricultural system is viewed with considerable concern. Foreign purchases of American farm and ranch land used for the production of food and fiber is one such variable that bears scrutiny. While foreign ownership of U.S. land is not new,2/ conditions today with respect to the land market are not very similar to any historical period. The impact of such investment will occur at the margin; it has been estimated that in any one year something less than 5 percent, and probably less than 2 percent, of the land in an area is involved in a market transaction. Therefore, a relatively small quantity of investment funds entering or being withdrawn from the land market in a region might have a significant effect on land values locally.

Agricultural producers have faced increased competition for land resources for at least 2 decades. This competition from consumption land buyers, non-agricultural interests, urban expansionists, speculative ventures and competition from other agricultural producers has, in some areas, drastically increased the market value of farm and ranch land. As a result, the cost of farm and ranch expansion has greatly increased and in some areas is prohibitive; on the other hand, this activity has provided older rural residents with an opportunity to sell their farms and ranches at rather high prices and to retire comfortably.

Table 3 compares the probable effects of the different land markets on selected variables which are basic to the functional characteristics of the agricultural sector. Land tenure is of concern because it indicates the type and intensity of land use that is likely to occur; this use in turn affects agricultural output. Land is normally operated most intensively under owner-operator arrangements, especially, in the case of younger age groups. Also, productivity rates are high for that group of tenants who are also partial owner-operators. These groups account

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1/ Agricultural exports largely canceled out the large deficit caused by the importation of petroleum and petroleum products in 1974. For the 12 month period ending December 31, 1974, U.S. agricultural exports amounted to approximately $22 billion while petroleum and petroleum products imported were valued at slightly more than $24 billion. Bureau of Economic Analysis, Survey of Current Business, Vol. 55, No. 9, U.S. Department of Commerce, Washington, D.C., Sept., 1975.

2/ Linnea Bernard, "Foreign Investment in the United States: Is America for Sale?", Houston Law Review, Vol. 12:661, 1975.

Table 3--Effects of different types of rural land markets on selected variables which affect the agricultural sector, Texas, 1976

Effects on the agricultural sector	Existing land markets		Developing land markets	
	Production	Consumption	Inflation domestic	Inflation foreign
Increase fragmentation of land units	- -	+ +	- -	- -
Increase absentee owners	- -	+	+ +	+ +
Increase number of owner-operators	+ +	- +	- -	- -
Increase number of tenants	- -	- +	+ +	+ +
Increased dependence of land values on agricultural returns	+ +	- -	-	-
Increased dependence of real estate loans on agricultural returns	+ +	- -	-	-
Increase agricultural output	+ +	- +	-	-

Degree of effect on the agricultural sector: - - large decrease; - some decrease; - + little change, may be either way; + some increase; + + large increase

for the major portion of the production land market. Most of the inflation market landowners are absentee owners. A sharp increase in their numbers will result in a marked increase in tenants and paid managers.

The fragmentation of land holdings is a special characteristic of the consumption land market and has been a matter of concern by agriculturalists in heavily affected areas. An increase in production, and inflation markets will lead, as has been the case in the past, to further concentration of ownership and consolidation into large holdings. This trend has a negative impact on rural communities and has resulted in out-migration of people from rural areas. Foreign investment and the general expansion of the inflation market for land will accelerate this trend.

Because of increased market demand from both the inflation and consumption land buyers the relationship between agricultural land values and net retruns will continue to decrease. This situation is very prevalent in Texas and appears to be gaining momentum in all but the very intensively farmed agricultural areas. In the prime, high output, agricultural areas where profits have been unusually large in recent years it is difficult to determine whether or not other factors are significant land value determinants at this point.1/ As the relationship of land values to net returns to the land diminishes, so will the dependence of real estate loans based on agricultural productivity. Loans will be based more on other financial factors than on the land's capacity to produce a net return from agricultural uses.

To the extent that the foreign investor causes the general inflation market to expand, negative impacts will result from increased absentee ownership, accompanied by an increase in the number of tenants and a corresponding reduction in the number of owner-operators. Agricultural production may decline as such owners may be prone to operate enterprises in a manner that will minimize risk rather than maximize returns. The slow adoption of new high risk technology may also characterize the inflation landowners.

Summary and Conclusions

1. There are two well defined rural land markets in Texas and generally in the Southwest 1) the traditional agricultural production market where land values depend on the net returns to the land and 2) the consumption land market where non-monetary factors are more important to the owner than economic returns.

2. A rural land market, termed the inflation market, is developing on the periphery. It consists of two sub-sets: 1) domestic buyers and

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1/ Agricultural net returns are being capitalized back into land values at a more rapid rate than at any time since World War II; potentially this is an extremely volatile land market.

2) foreign buyers. In each case land is purchased for the purpose of storing and conserving accumulated wealth during anticipated periods of hyper-inflation.

3. The goals of the buyers in each of the markets exhibit dissimilar characteristics. In the production market buyers own the land for the specific purpose of earning a living. An annual cash flow is of prime importance to younger owners who are generally heavily indebted and are accustomed to an ever increasing standard of living. Older rural residents historically have used the land as a means of accumulating an estate and have placed less emphasis on the annual net income from the land. The consumption market buyers are mostly concerned with the non-monetary utility generating capacity of the land. In many cases they are heavily indebted but plan to retire debt obligations from non-agricultural income. The two sub-sets of the inflation market are quite similar in their purpose of ownership. Both foreign and domestic buyers have accumulated wealth which they are investing in land, thus, in most cases the land will not be heavily mortgaged. While factors such as tax avoidance, cash flow, etc. are important, the rate of land appreciation is paramount along with the security and stability of the investment.

4. The rural community is important when comparing the effects of each of the land markets. The type of land market in turn determines the use of the land. The production market has resulted in land consolidation similar to that anticipated in the case of the inflation market. Therefore, each market will continue, to some degree, to result in out-migration from the rural areas. However, since the owners of production land live in the area, they are prone to reinvest in the rural communities and have a vital interest in keeping them economically and socially viable. This will not be the case with respect to both foreign and domestic inflation landowners. They are absentee owners and have no personal interest in the region or the rural communities. The consumption landowners bring new resources to rural communities and are largely responsible for the growth in population numbers and the new economic vitality found in many communities.

5. The welfare of the agricultural sector is of vital interest to the U.S. economy. The importance of agricultural exports has been patently demonstrated in the recent past. The comparative advantage of American agriculture is of immense importance to both domestic and foreign consumers. The owners of production land are essential to the continued efficiency of U.S. agriculture. A significant expansion of the ownership of rural land (domestic or foreign) for inflation purposes will prove, in the long run, to be a detriment to agricultural productivity. The result will be some shift of control away from agriculture to non-agricultural interests. Basic land tenure patterns will change as tenancy increases in relation to absentee landowners. Land resources and the resulting agricultural production will be concentrated in fewer hands.

FOREIGN INVESTMENT IN THE COLORADO REAL ESTATE MARKET

Eliot O. Waples*

Foreign investment in real estate is not new to Colorado and the other Rocky Mountain States. Following the Civil War, British and Scottish interests made extensive investments in cattle ranching. Similar investments were made in precious metal lands. 1/ The opening of public lands for homesteading caused some concern regarding domination by foreign interests.

> "As settlers moved into western Dakota, Nebraska, and Kansas, and into eastern Colorado, a tempest developed when they came upon the fences strung by cattlemen. The large size of the British concerns brought most of the wrath down on alien heads. . . . Although Americans were far more involved in illegal fencing operations than aliens, it was the latter who received the publicity." 2/

In 1886, Congress finally prohibited alien ownership of land in the Territories. 3/ Meanwhile, several states, namely Nebraska, Texas, Illinois, and Minnesota, enacted legislation to restrict or limit alien ownership of land. 4/ Colorado did not join these states in restrictive legislation, and as the Federal Act only applied to the Territories, none of the land in Colorado was affected.

Presumably, a moderate amount of alien investment has continued in Colorado. In the last few years, foreigners have increased interest in Colorado, as elsewhere in the United States.

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1/ Jackson, William T. The Enterprising Scot. Edinburgh University Press, 1968. Also see: Frink, M., Jackson, W.T. and Spring, A.W. When Grass Was Green. University of Colorado Press, 1956.

2/ Jackson, William T. Ibid., p. 104.

3/ Frink, Jackson and Spring. Ibid., p. 250. Also see Jackson, William T. Ibid., p. 109-111. Also see U.S. Statutes at Large, XXIV, 476-7.

4/ Jackson, William T. Ibid., p. 111-113.

Public Records as Sources of Information

Records on state and local levels do not distinguish alien from other ownership in Colorado. There is no disclosure act in Colorado requiring that beneficial interests of alien owners be identified, such as Iowa now requires, in reference to agricultural lands. 1/ In Colorado the exact place of residence of grantors and grantees in deeds and of vendors and vendees in contracts need not appear on the recorded instrument. When an instrument is filed with the County Clerk and Recorder, he secures a mailing address for the recorded instrument. Unless a foreign address is given, there is nothing to indicate the purchaser may be an alien. Addresses used by Assessors and Treasurers for the mailing of assessment and tax notices may be a financial institution, a management company, an attorney, or other agent of the owner. Each year, County Assessors must file a list of owners of real and personal property who are listed as nonstate residents. This list, however, is compiled from the list of addresses indicated above, and in no way indicates the owner's residence or nationality.

Articles of incorporation and corporation reports filed with the Secretary of State disclose the names of the directors and principal officers, who do not have to be stockholders. Stockholder investments need not be disclosed. Partnership agreements are generally filed on a county level. In the case of limited partnerships, a predominant form in the real estate area, identity of the general partner is shown, since he must execute instruments in the conveyance of title. Identity of the limited partners is not required and is not always shown. Consequently, there is no way public records can be used to identify alien ownership. The information would have to come from other sources. 2/

Current Activity

Information used in this report in assessing the alien land investment in Colorado came primarily from personal visits and phone calls with key industrial, commercial, and land brokers, international bankers,

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1/ See House File 215 passed by the General Assembly of the State of Iowa prior to July 1, 1975, and approved July 11, 1975.

2/ We traced two transactions involving alien ownership through the public records as a test case. One involved a limited partnership, another a corporate ownership involving a joint venture between a foreign concern and a domestic concern. In the case of the partnership purchase, the name of the partnership shown on the deed provided no help in identification. Papers filed with the County Clerk gave the names and addresses of the general partners as well as the limited partners, but all addresses given were in the United States. The only possible clues were the unusual names. In the case of the corporate purchase, neither the deed nor the corporate reports gave any clues as to alien interests.

county extension agents, a few public officials, news reporters, and editors. Additional information was secured from news items and other published articles. 1/ The consensus is that there have been a limited number of transactions and, more recently, a fairly large number of inquiries; most of the inquiries did not lead to transactions. The main categories of real estate covered in the survey were: industrial, income commercial and apartments, recreational, urban development land, and farm and ranch lands. No concerted attempt was made to investigate mineral and timber resource development. 2/

Industrial Real Estate

Although Colorado has many small and medium-sized manufacturing enterprises and some major firms, it does not rank as a major industrial area compared with some other regions of the United States. Consequently, the activity in this area of investment is limited. Over a year ago there were rumors of a multimillion dollar offer to purchase the Gates Tire plant in the Denver area. This offer was made by Bridgestone, a Japanese firm and one of the world's leading tire manufacturers. About the time of the devaluation and Japanese restrictions on the export of capital, this transaction was cancelled. The exact reason for cancellation is not known. 3/ There have been rumors that the Japanese were interested in purchasing the Monfort feed lot and processing plant. A leading officer of Monfort said, to the best of his knowledge, there was no substance to the rumor. He added that Japanese have visited the operations, and that Monfort has contracts for exports of beef products to Japan.

Commercial and Apartment Properties

Several major brokers and bankers dealing with foreign interests indicated that alien investors with substantial amounts of capital were interested in urban-oriented, income type real estate. This was mentioned as the prime area under consideration by Mid-East and European investors. Preferences seemed to be shopping centers, office buildings, industrial warehouses, and, more recently, apartment complexes. Emphasis was also on top locations, good occupancy, and the availability of good property management. Several investments in apartment complexes and smaller rental units were cited in the Front Range area. The Oxford-Anschutz Development Co. purchased a major parcel of land in downtown Denver. Oxford is a Canadian-based development company, in a joint venture with an American concern. 4/ The same group

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1/ Several items of information were secured through a student survey referred to later in this report.

2/ A good share of Colorado timber resources are on federal and state forest lands, as are many mineral resources.

3/ Gates sold this plant in March, 1976 to Michelin Tire Corp., a French firm.

4/ Strabala, Bill. "Mideast Ownership in Area Envisioned." The Denver Post, January 12, 1975.

reportedly owns a 200,000-square foot office building in Colorado Springs. Both transactions involve multimillion dollar properties. The Denver purchase will involve an additional substantial investment in redevelopment. References were made to even larger transactions in commercial real estate in other parts of the United States. 1/ It is anticipated that income commercial properties in Colorado will attract increasing numbers of investors from abroad in the future.

Recreational Property

Recreational property probably attracts the greatest number of alien investors. Transactions in this category involve lots for second homes, condominiums, lodges, guest ranches, and raw development land, with prices ranging from four to seven figures. Total dollar investment in this category may be less than commercial and other urban income types, but the individual purchases are more numerous. Nevertheless, foreign-owned recreational real estate holdings are still very small compared to domestic investment. For example, of 4,275 properties in Vail, less than 1½ percent were foreign owned at the end of 1975, although Vail is an internationally known ski resort. 2/

Vail Associates made a concerted effort in 1975 to attract foreign investors, particularly Mexican, Venezuelan, and other Latin American interests. They even hired Spanish speaking ski instructors. Mexican interests bought, from blue prints, a large condominium building in the upper hundred-thousand dollar range. Mexican investors also bought lots, a number of condominium units, and a large lodge. They prefer the larger three-bedroom units, ranging in price from $80,000 to $110,000 per unit. The Mexican groups reportedly bring considerable amounts of purchasing power to the shops and restaurants in Vail. "Ski Country USA" can expect an increase in promotion abroad, in an effort to entice investment in ski-related Colorado real estate.

There were also reports of other types of recreational investments on the part of foreigners. A group of Austrians invested about $1 million in western Colorado mountain land, which resembled land in their home country.

Urban Development Land

Foreign interests also invested in land adjoining urban areas along the Front Range. Greek interests were reportedly involved in one purchase

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1/ Examples: a German family purchased a Dallas office building for a reported $42 million; Kuwait interests purchased some 20 properties in the Boston area for a total of almost $23 million; the Triad Investment Company, presumed to represent Mid-Eastern interests, purchased a large tract of land near the Salt Lake City airport for development of an extensive industrial park.

2/ Figures furnished by Canada's of Vail, Ltd.

of about 500 acres adjoining a northern Colorado city. Some 4,600 acres in Douglas County, south of the Denver metropolitan area, were reportedly purchased by a New York firm representing Greek shipping interests. 1/ A Canadian company, specializing in residential development, is interested in several hundred acres in the Denver area. They plan to develop top-quality residential lots and sell them to certain custom builders. On the whole, urban development land does not seem as attractive to foreign investors as fully developed, well-located, income type properties.

Farm and Ranch Lands

Forty-one percent of the land in Colorado is in public ownership and Indian lands. About 35 percent is under federal jurisdiction. 2/ In the Rocky Mountain States a large number of ranching operations involve a combination of deeded (private) land and leased land (leased from BLM, the U.S. Forest Service, or state agencies). Federal statutes and regulations limit and restrict aliens from leasing BLM and Forest lands under the control of the federal government. 3/ These regulations tend to limit investment in ranch lands.

Farm and ranch brokers reported numerous inquiries from possible investors representing interests in Hong Kong, Italy, Germany, England, the Netherlands, Japan, Latin America (particularly Argentina, Brazil, Costa Rica, and Venezuela), and some Mid-East interests. However, most brokers indicated they were not aware of any particular transactions. As one broker remarked, "I have shown lots of properties to foreign investors or their agents, but have only one small transaction to date." Frequent reference was made to the 15 percent interest purchased by Arab investors in the Arizona Colorado Land and Cattle Company, which has sizable holdings in western lands, including the 155,000-acre Baca Grande development in southwestern Colorado. They paid $9.2 million for 500,000 shares. 4/

> "Maurice McGill, vice president of finance told The Denver Post Tuesday that the purchase of 15 percent interest was a 'good faith' gesture on the part of a number of Middle East companies represented by Khashoggi in return for the Phoenix company's expertise in setting up agricultural ventures for the Arabs.

1/ Strabala, Bill. Ibid.

2/ Colorado State Land Board.

3/ Morrison, Fred L. and Krause, Kenneth R. State and Federal Legal Regulation of Alien and Corporate Land Ownership and Farm Operation. Agr. Econ. Rpt. 284. U.S. Dept. of Agr. Econ. Res. Serv., May, 1975, p. 40.

4/ Strabala, Bill. "Arabs Hold Shares in Ariz.-Colo. Land." The Denver Post, November 27, 1974.

"The stock acquisition was intended to assure Arizona-Colorado officers that the Arabs 'won't hurt us in the Middle East,' McGill explained."

Sale of 1,780 acres of the McDowell Ranch in Park County, Colorado, to Beleggingsmaatschattij Industry Bank for $734,400 was recorded in early 1974. The name seems to be of Dutch origin; the agent is listed on the assessor's records as living in Florida.

No major purchases of irrigated land were discovered. A key executive in Great Western Sugar Company indicated there had been no sales, to their knowledge, of sugar beet land in Colorado to alien investors.

Returns on mail questionnaires made reference to reported sales of farm and ranch lands: 40 acres of agricultural land in Weld County to a Jordanian; purchase of a 50,000-head feedlot in Prowers County by Japanese interests for a reported $2 million; purchase of some 20,000 acres in Park County by Dutch and Arab interests (we could only verify the 1,780-acre tract mentioned above); Japanese purchase of agricultural land near Wray, Colorado; purchase by Arab interests of more than 8,000 acres in western Colorado; and purchase by Argentine interests of 10,000 acres for about $6 million in Baca County. 1/

One broker specializing in ranch lands in the Rocky Mountain and northwestern states indicated many inquiries by foreign interests, but no transactions to date. According to him, Canadians had expressed a considerable amount of interest in ranch real estate. He also had been in contact with an Italian industrialist who wanted to move to Colorado and buy a residence and a cattle ranch. Another broker had a 42,000-acre ranch for sale in Custer County; to date he had received inquiries from Syrian, Italian, West German, and Danish prospects. While actual transactions concerning farms and ranches were not documented, there appears to be a reasonable amount of activity in this type of land.

Future Prospects

Alien investment in Colorado real estate is likely to increase, especially in urban-oriented income real estate, recreational real estate, and, perhaps, farm and ranch real estate. If Colorado continues the growth rates of the past decade and a half, income real estate in the urban areas will certainly be attractive investments. Recreational investment is most likely to consist of rental and condominium units in established recreation areas, and business enterprises connected with these areas. Investment in raw land for recreational development will attract only those with sufficient capital resources to complete a fully developed, marketable enterprise which can meet local, state,

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1/ Survey conducted by several students in a Real Estate Finance class at Colorado State University in February, 1975.

and federal land use regulations. The day of the interstate "land hustler" is rapidly becoming a thing of the past in Colorado. 1/

Activity in the farm and ranch areas will probably continue, providing these ventures meet foreign investors' requirements. Investment in ranches will most likely consist of operations not subject to leases on federal lands, unless only minority interests are involved so that the operation would meet federal standards.

Ownership of water rights is not discussed in this report. Little is known concerning the concentration of private ownership of water rights in Colorado. If out-of-state or foreign interests should make a concerted effort to purchase water rights, this could be of critical concern to Coloradoans.

Transaction Chains

Brokers were queried on such questions as: How do you obtain your foreign prospects? Do you deal directly with the purchaser? If not, what are the links in the chain? Are the links different among different foreign groups? The answers were varied.

Large commercial banks (particularly those with international departments), investment bankers, European pension funds, international real estate brokers, and lawyers were listed as direct or indirect sources of prospects. 2/ Some brokers receive their contacts through local banks; others receive contacts direct from banks in other states and abroad. Generally, banks refer prospects only after being assured that the real estate firm is a responsible dealer, meeting the specifications of their client. Mid-East inquiries are partly channeled through major international banks. An example is the Bank America International Realty Corporation, which reportedly does the leg work for the Kuwait Real Estate Bank. Banks, however, are not the only source of prospects. Triad Investment Company represents Saudi and some other Mid-East interests. Ackerman & Co., an Atlanta, Georgia, realty investment and management firm, represents Hexalon, which is the realty arm of a Dutch based conglomerate and also a point of contact for Mid-East and European investment. 3/

1/ Colorado experienced a rash of this type of development during the late sixties and early seventies. However, several events have slowed this activity to a dribble. These include: financial bankruptcy of some operations; stricter state and local regulations on subdivision activities; retrenchment of lending institutions; and national publicity relating to unethical practices of some developers.

2/ The banks named included: Barclay's (English); First National City Bank of New York (San Francisco branch); First National Bank of Chicago; Bank of American International Realty Corporation (BAIR); Chase Manhattan; and the major Denver banks.

3/ One of the minority shareholders is UBAF Ltd., (Union des Banques Arabes et Francais). It was also reported that Ackerman & Co. is partly owned by a branch of the Dutch holding company.

Many brokers reported that all or a portion of their contacts were with individual investors. Some prospects were secured through business or vacation trips abroad. Others came directly to the broker's office. Some contacts were made through personal acquaintance covering a period of years. Others were the result of promotional packages distributed through banks, other brokers, or directly to possible foreign investors. Several brokers belonging to the International Real Estate Federation (FIABCI) had secured prospects through contacts with other members of this association. Most brokers had no plans to travel abroad to solicit foreign business. Instead, they depended on their established reputations and referrals. As one broker stated: "If I list a choice piece of property in the central business district, I can generally peddle it on the street within 24 hours."

Most of the direct inquiries came from European and Latin American investors or their direct representatives. Time and again it was mentioned that the English were old pros--after all, they have been involved in international real estate longer than most other nationalities. Canadian firms have acted for many foreign interests, particularly German. Another source of contact, probably overlooked by many participants, is former foreign students. Two different transactions were traced to such sources. In another instance, a former graduate student, now occupying a high position in a Mid-East country, spent a great deal of time in the United States checking out potential investments of all types, including potential ventures of enterprises proposed for the Mid-East country. Citizens of foreign birth who have significant contacts in the "old country" are also important sources.

One broker summarized certain characteristics of Mid-East investors: their strong preference is for well-located, urban-oriented income property. They prefer to own the land and are not very interested in leased land. They never buy without personally inspecting the property. Management services are a very important part of the package, and they want to own the major share in any venture.

One large brokerage firm had been approached by another firm, foreign based, indicating that for a substantial retainer fee, in the lower six figures, they would develop market surveys and promote the firm's listings with Mid-East investors. The Colorado firm declined the offer. 1/

1/ Several brokers were concerned about the dual role of real estate counselors and brokers by some foreign firms. In the United States, the broker works on a prearranged commission basis with his client. In most cases the seller is his client, but in some cases it is the buyer. If the broker is hired in the capacity of a counselor on a fee basis, professional ethics dictate that he not participate in commissions on sales relating to his client.

Motivations and Expectations

Most Colorado brokers and bankers believed that Europeans and Canadians were the most active investors, but that there was growing interest among certain Latin American and Mid-East investors. Japanese were active until their own country's inflation forced them to cut back on export of capital. Most foreign investors appeared to be conservative in their investment preferences. Some of these views were repeated in a recent New York Times news story. 1/

What then, motivates aliens to invest in Colorado and U.S. real estate? Most foreigners consider the political climate more stable than in many other countries. Some considered the United States as the last outpost of capitalism. Owners of real property in some foreign countries have experienced severe taxation and increasing restrictive legislation concerning the use and ownership of their property. While foreign investors do not appear to have any significant tax advantages over Americans in ownership of U.S. real estate, they do feel there are some tax advantages over a similar investment abroad.

Some Italian investors indicated concern about the long-run political and economic climate in Italy. Similar indications were relayed to brokers and bankers by some German and Austrian investors. Mexicans expressed some concerns about the future government in Mexico, and the possibility of nationalization of certain real estate holdings. 2/ Second homes in Mexico are apparently subject to heavy taxation, and interest rates on mortgage loans are 15-20%, compared with 10% in comparable second-home areas in Colorado.

Most alien investors seem interested in long-run investment, rather than short-run, speculative type transactions. They are willing to accept a more conservative rate of return than the American investor, banking instead, on long-run appreciation of the property. Many foreign investors feel that U.S. real estate is a bargain, compared to similar investments abroad. H. Bob Fawcett, Vice President of Previews, Inc., reports that land within 2 hours' driving distance of major metropolitan areas in other parts of the world is twice or three times the price of land the same distance from our metropolitan areas. He stated that the Holiday Inn site in Tokyo was triple the price of a comparable site in Manhattan, New York. 3/

1/ Horsely, Carter B. "Foreigners Cautious on Investments in New York." New York Times, Jan. 7, 1976, p. 59.

2/ See Appendix, Alien Investment in Arizona, for discussion of flow of Mexican funds into Arizona banks.

3/ Personal interview with Mr. Fawcett. Previews, Inc. is an international real estate marketing concern with offices in major U.S. cities, Europe, and Beirut, Lebanon. They specialize in luxury homes and land, including farms and ranches.

The main motivation of most Mid-East, OPEC-related countries in making U.S. investments appears to be a hedge against the day when the oil revenues will diminish. They want to secure their financial assets, pending the time when these funds will be needed for their countries' economic development. 1/ Mr. Debs, First Vice President of the Federal Reserve Bank of New York, indicates a dramatic surge of equity investments in the United States by a small number of OPEC nations, namely Saudi Arabia, Kuwait, and the United Arab Emirates. He indicated there was also a substantial lengthening in the maturity of such investments. 2/

While many alien investors use financial leverage in real estate transactions, they appear to be more conservative in its use than their American counterparts. This practice gives them more holding power during declining income periods. The main motivations seem to be safety and preservation of their capital, a favorable political climate, and satisfaction with moderate income streams on the theory that well-located, choice, U.S. real estate is due for a substantial amount of long-run appreciation.

Colorado Resident Reactions

To date there has been no publicity nor any official reaction, either public or private, concerning alien ownership of real estate in the State of Colorado. Furthermore, unless such issues emerge, it is unlikely that public officials or members of the legislature will devote any attention to this matter.

Some reaction into possible Colorado citizens' reactions may be gleaned from the 1975 student survey. 3/ Respondents listed the following advantages of foreign investment in real estate:

Brings capital investment into the state
Helps the state and local economy
Adds to our tax base
Aids in development of untapped resources
Increases competition in the market
Strengthens the buyer market
Increases the market for goods produced
Helps us to better understand foreigners
Provides necessary counterpart of U.S. investment abroad
Improves foreign relations
Improves our balance of payments

The disadvantages listed emphasized the problems of absentee ownership as envisioned by these respondents:

1/ Debs, Richard A. "Petro-Dollars, LDCs, and International Banks." Monthly Review. Federal Reserve Bank of New York, Jan. 1976, p. 11.
2/ Ibid., p. 12-13.
3/ 1975 Student Survey. Ibid.

Too many absentee owners already
Absentee owner has no concern for local affairs
Foreigners not conscious of community welfare
May influence local government adversely
Might overbuild recreational property
Sellers of land would be the only benefactors
Land prices will rise
Sudden withdrawal of foreign investor could hurt local economy
Increases problem of tax assessing and collection

A number of respondents, particularly from rural counties, interpreted "alien" or "foreign" to mean any outsider. In other words, "Texans" were considered alien by some respondents, who wanted to control their own destiny without dictation from non-residents of the community.

In conclusion, the question of alien ownership has not become an issue in Colorado as of this date. A small amount of foreign investment has taken place and, generally speaking, is considered in the same category as domestic investment from out-of-state sources. Coloradoans have lived with a considerable amount of imported capital investment for a long time, and feel it is a necessary ingredient in the growth and development of their economy. If issues develop, they are most likely to be related to agricultural and other resource areas. This will not occur unless public pressure groups feel that such investments are detrimental to their interests.

Appendix

Alien Land Investment in Arizona*

Nine foreign mineral exploration companies currently have operations underway near Tucson. These firms are primarily interested in copper and are controlled by German, Swiss, British and Canadian interests. 1/ While these are small operations, this activity does suggest the possibility of additional foreign investment in Arizona's copper mining industry.

Siemans A/G of Frankfort, West Germany owns Dickson Electronics. This firm has plants in Mesa and Scottsdale with 1,100 employees. 2/ Japanese interests own LegendCity Amusement Park, a large recreational complex in Phoenix, which was acquired in 1972. 3/

Canadians, mostly individuals, acquired three apartment complexes in Phoenix in 1975 for a total sales price of $8 million. Two small apartments in Phoenix were sold to German and British individuals in 1975 for a total price of $300,000. 4/

There were persistent rumors from informed sources that additional foreign investments had occurred or were under negotiation. Japanese investment activity in Arizona reached a peak in 1972 and has since declined in recent years. There were rumors that Japanese interests purchased a considerable amount of citrus property near Phoenix, perhaps as much as 15,000 acres. These transactions were supposed to have occurred several years ago and were mentioned by both private and public sources. Another unconfirmed report dealt with Japanese purchase of a large recreational complex south of Phoenix. Other rumors concerned Italian and Canadian investment in housing developments in Phoenix.

A considerable amount of undeveloped rural lands in Arizona are held by blind trusts and corporations. In an attempt to prevent land frauds which have occurred frequently throughout the years, the Arizona State Legislature passed three separate pieces of legislation in 1975. This legislation requires disclosure of information regarding the ownership of lands held by blind trusts, corporations and trusts organized for subdivision purposes. 5/

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*Dr. James A. Munger prepared the Appendix relating to Arizona and helped collect some of the information on Colorado.

1/ Arizona Office of Planning and Development, Economic Development Section, State of Arizona.

2/ Ibid.

3/ Ibid.

4/ Supplied by two large real estate firms.

5/ Attorney General's Office, Real Estate Division, State of Arizona. Arizona Revised Statutes, Section 6-860 (Blind Trusts); Title 10 (Corporations); Section 32-2181 (Subdivisions).

Banks throughout the state reported a heavy inflow of money from Mexican sources. Most of this money now is in certificates of deposit or savings accounts, but there is widespread speculation that much of this capital soon may be invested in Arizona or other U.S. properties.

Attitudes toward alien investment varied with source. Real estate brokers, bank officials, and most private sources contacted felt that a continued heavy flow of capital from outside the state was needed to support Arizona's high growth rate, both in population and economic activity, and were not particularly concerned whether this capital came from domestic or foreign sources. The attitude of state officials could best be described as wary.

LEGAL AND INSTITUTIONAL ASPECTS OF FOREIGN INVESTMENT IN URBAN LAND

James M. Brown*

Introduction

During our common law history, land has undergone several transitions in its primary social function. Casner and Leach have suggested three basic functions, each related to the primary social needs of a different era. Summarizing "the development of the position of land ownership in the English political and economic system. . .," they observe:

> In feudal times land was power. . . . In post-feudal times land was family wealth . . . . At the present day land is a basic commodity of commerce. . . . 1/

Nowhere can the use of land as a commodity be seen more clearly than in the markets for urban land.

Urban Real Estate Market

Dependable information about alien investments is very limited. One

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1/ CASNER AND LEACH, CASES AND TEXT ON PROPERTY, 223-4 (2d ed., 1969). In recent years, a "public trust" concept has begun to impose constraints upon the commodity status of land. See, e.g., BOSSELMAN and CALLIES, THE QUIET REVOLUTION IN LAND USE CONTROLS, 314-18 (1971); Evans, Regional Land Use Controls: The Stepping Stone Concept, 22 BAYLOR L. REV. 1 (1970); Miller, Hawaii's "Quiet Revolution" Hits the Mainland, 62 NATIONAL CIVIC REV. 415 (1973).

author 2/ indicates that alien investors prefer resort hotels, motel chains, commercial shopping centers, commercial office buildings, warehouses, apartment buildings, and condominium complexes, as well as second home developments and recreation lands that attract urban area residents. In a few areas, alien investors have engaged in various types of residential construction, usually through extension of their homeland construction businesses. Older income-producing properties which are well located within the central sector of large cities have been particularly attractive. Some aliens have demonstrated an interest in joint-venturing with American firms in "shopping malls, . . . commercial buildings, resorts, islands, office complexes and apartment houses. . . ." 3/, as well as in warehouses and industrial buildings. Established areas, proven locations, and quality construction, whether new or old, are viewed as prime property. Alien investors often prefer long-term investment in income-producing properties of demonstrated or expected stability over highly speculative property. 4/

Alien investors have participated in limited partnerships, 5/ joint ventures 6/ and real estate investment trusts. 7/ They have also tested the primary mortgage field, particularly with respect to condominium and apartment complexes.

Alien investors have often used various trust relationships and types of business organizations which permit at least a one step removal from the status-relationship to land associated with the concept of "ownership."

2/ Bagby, Real Estate Financing Desk Book, 374-77 (INSTITUTE FOR BUSINESS PLANNING, INC. 1975)[Hereinafter cited as Bagby.]

3/ Id., at 375.

4/ Bagby, supra, n. 2, at 376; see, generally, Hearings before the Subcommittee on Foreign Economic Policy of the House Committee on Foreign Affairs, 93rd Cong., 2nd Sess. (1974)[Hereinafter cited as 1974 House Subcommittee Hearings]; Id., Appendix 3, 299 at 320-21, 324. One successful D.C.-area commercial developer interviewed on May 7, 1976 commented that there is more "patient money" available from foreign investment sources, sometimes on terms of up to 100 years.

5/ See, e.g., Hall, Use of Limited Partnership to Invest in Depreciable Property, 21 MERCER L. REV. 481 (1970).

6/ See, e.g., Leon, Designing the Real Estate Joint Venture to Work, 3 #1 REAL EST. REV. 33 (1973)[Hereinafter cited as Leon].

7/ See, Stanley, The Real Estate Investment Trust: Legal and Economic Aspects, 24 U. MIAMI L. REV. 155 (1969) for descriptive purposes; Nad and Friedman, Income Tax Problems of Real Estate Investment Trust, 1 REAL ESTATE L. J. 368 (1973)(for tax aspects). REITS fell into hard times in 1974 recession and many "became insolvent or began to operate on a mere survival level. . .", Phillips, What Happened in 1975 and a View of '76, LAWYERS' TITLE NEWS, Jan-Feb (1976) at 16; see, e.g., Roundup, W. Post, Jan. 15, 1976 at F.1, col. 3, 4 (Maryland Realty Trust); W. Post, Feb. 6, 1976 at C.1, col. 7, 8 (American Realty Losses).

Such indirect or "beneficial" interests generally need not be disclosed in the land records. 8/

The corporation is the most common title-holding entity one step removed from the real parties in interest. Many subcategories of corporate structure are possible, each form providing its own set of advantages and disadvantages.

There are also many different lease-hold arrangements, primarily used as financing devices, that also confuse ownership identification. The sale-leaseback mechanism, 9/ is sometimes complicated by a "sandwich lease," 10/ or by a "multiple sandwich." 11/ Sophisticated mortgage interests can be created. One fairly recent and quite widely used modification is the so-called "wrap-around" mortgage. 12/ Another approach is to require lender participation, or sharing, in the income produced by the development financed. This approach has so many varieties and degrees that any complete

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8/ See, e.g., MORRISON AND KRAUSE, STATE AND FEDERAL LEGAL REGULATION OF ALIEN AND CORPORATE LAND OWNERSHIP AND FARM OPERATION, Agricultural Economic Report No. 284, Economic Research Service, U.S. Department of Agriculture (May 1975)[Hereinafter cited as Morrison/Krause], at 34-5. For an updated version by Professor Morrison, see, Vol. 2, Foreign Direct Investment in the United States, Interim Report to Congress, Dept. of Comm. (Oct. 1975), Appendix XI. [Hereinafter cited as Interim Report]. See, Hearings on S. 2890 Before the Subcommittee on Foreign Commerce and Tourism of the Senate Committee on Commerce, 93rd Cong., 2d Sess., at 41 (1974); Hearings on Foreign Investment Legislation Before the Subcommittee on Commerce, 94th Cong., 1st Sess. at 186-87 (1975). A federal statute might be enacted requiring registration by aliens of the location, the legal description, the name of the owner and his interest in the acquired real estate; but a comprehensive statute would be complex, difficult to draft, and hard to enforce.

9/ See, e.g., Bernard and Perlstadt, Sale and Leaseback Transactions, 1955 U. ILL. L. FORUM 635 (1955); Interim Report, supra, n. 8, at XI-5.

10/ A transactional maneuver in which the investor in a leasehold assignment establishes his lease position between the master landlord and the operating tenancy, which tenancy becomes a sublease from the investor-lessee.

11/ Sometimes termed "lease-layering." See, generally, Sillcocks, Financial Sense in Real Estate Sales and Leasebacks, 5 REAL EST. REV. 89.94 (Spring 1975); Haynes, Real Estate Dealing, 4 REAL EST. REV. 14 (Winter 1975).

12/ Basically a second mortgage process, enveloping the first mortgage with a second, larger, higher interest rate loan, the refinancing mortgagee making the installment payments on the first mortgage out of debt service payments. See, Hershman, Usury and "New Look" in Real Estate Financing, 4 REAL PROP., PROB. & TR. J. 315 (1969); Gunning, The Wrap-Around Mortgage. . . Friend or U.F.O.? #2 REAL EST. REV. 35-38 (1972); Leiden, How to Wrap-Around a Mortgage, 4 REAL EST. REV. 29 (Winter, 1975).

cataloguing would be difficult. 13/ "Front money" deals between investor and developer take many different contractual patterns, whether there is a joint venture, partnership, or corporate institutional linking of the parties. 14/

One common consideration affecting the choice among possible business structures is the tax significance. 15/ Generally, the alien investor has the same tax concerns as the U.S. citizen, but his status may be unique in several ways. 16/

Land Use Management and Control Processes: Significance for Urban Real Estate Investment Decisions in The United States

Police power regulatory processes are limited in purpose to the protection of the public health, safety, morals and general welfare. Of these, the general welfare function has been treated most expansively by the courts. When land use legislation includes a finding of necessity affecting the general welfare, courts are reluctant to interfere unless it can be shown that the enactment is arbitrary or capricious, or beyond the powers of the enacting body. Legislation that specifically discriminates against alien ownership of real estate is often found invalid.

If the various land use controls discussed below are considered separately, they will seldom appear to present a major impediment to alien investors. It is their cumulative effect that is likely to dissuade alien investment in real estate. In urban areas controls are generally more comprehensive, have a wider spectrum of purposes, and are subject to more effective and comprehensive administrative management and supervision. Nonetheless, where the incentives are sufficiently attractive, there is no reason why alien investors with competent counseling cannot be competitive in the urban real estate investment market.

13/ See, e.g., Armstrong, The Developing Law of Participation Agreement, 23 BUS. LAWYER 689 (1968).

14/ See, e.g., Roegge, Talbot and Zinman, Real Estate Equity Investments and the Institutional Lender: Nothing Ventures Nothing Gained, 39 FORDHAM L. REV. 579 (1971); Leon, supra, n. 6, but see, e.g., Palmer v. Howard, 493 F.2d 830 (10th Cir. 1974) for pitfall aspects.

15/ See, e.g., Tigner, Organizational Forms for Real Estate Ventures: Selected Tax Considerations, 2 MEM. ST. U. L. REV. 259 (1971). See, generally, N. Steuben, REAL ESTATE PLANNING: CASES, MATERIALS, PROBLEMS (1974) and Supps. (1974, 1975). [Hereinafter cited as Steuben].

16/ See, e.g., 1974 House Subcommittee Hearings, supra, n. 4 at 240-248. Obviously, income tax rates vary from one nation to another. Income tax "shelters" available to domestic investors may not be comparatively attractive to alien investors whose income is largely beyond the reach of I.R.S. For domestic or alien investors, expert tax counseling is essential.

Planning and Zoning Laws and Administration

The zoned status of property is an element of attraction for an alien investor who intends to continue an existing use or to initiate another use permitted by the applicable zoning. Investors should be aware, however, that the municipal government, or nearby property owners, may initiate zoning changes that affect an entire neighborhood. Zoning theoretically can be changed only where a mistake in the original districting is recognized, or when local conditions have so changed that the existing zoning can no longer serve its intended purposes. Jurisdictions vary considerably in their interpretation and application of this "change or mistake" rule. 17/ Even if a later change in zoning renders a property non-conforming, existing uses are permitted to continue at least for a reasonable time, and normal maintenance and repairs may be made during the remaining useful life of the building. 18/ If the buyer intends to convert to a different but permitted use that requires a license, the issuance of which is discretionary on the part of the issuing official, the buyer always risks a denial of his application. 19/

If the land under consideration is sought for a use not permitted by the applicable zoning, the prospective purchaser may find that his pursuit of the desired zoning change is a frustrating experience. 20/ He must not only carry the procedural burden of justifying the change, but the decicion is legislative and thus subject to political influences. Furthermore, administrative and procedural prerequisites are time-consuming, often unclear, and sometimes vulnerable to delaying tactics. A variance 21/ or a special-use permit 22/ often may be appropriate, but each exception process has limited applicability. Arbitrary denials, 23/ even when successfully challenged in the courts, impose costly and time-consuming delays. 24/

17/ See, e.g., D. HAGMAN, URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW (1971), 192-94 [Hereinafter cited as Hagman]; N. WILLIAMS, 1 AMERICAN LAND PLANNING LAW, § 32.01 (1974); [Hereinafter cited as Williams]. See, also, Linowes and Delaney, The Maryland Change-Mistake Rule: Mistake That Should be Changed, 1971 LAND USE CONTROLS ANNUAL 117; MacDonald v. Bd. of County Comm'nrs., 210 A. 2d. 325, 340-41 (1965).

18/ Hagman, supra, n. 17 at 146-48.

19/ See, cf. Economy v. S. B. & L. Building Corp., 138 Misc. 296, 245 N.Y.S. 352 (1939) and cases cited. (Licensing official's discretion, in a leasehold situation as affecting validity of lease.)

20/ See, generally, R. BABCOCK, THE ZONING GAME (1966)[Hereinafter cited as Babcock].

21/ See, e.g., C. CRAWFORD, STRATEGY AND TACTICS IN MUNICIPAL ZONING, at 28 (1969)[Hereinafter cited as Crawford].

22/ Id., at 30.

23/ Id., at 39; Babcock, supra, n. 20 at 91-92, 156.

24/ Babcock, supra, n. 20 at 94.

Most urban area zoning codes permit the authorities to impose many, and sometimes onerous, conditions as prerequisites to achieving the zoning changes necessary for Planned Unit Development, or other large, mixed use projects. 25/ In recent years, burgeoning growth has outpaced the accommodation capacity of urban areas, and led to various moratoria on any project-size development. 26/ Such legislation, being of an emergency and thus temporary nature, can be enacted on relatively short notice. 27/ Even if ultimately over-turned in the courts, 28/ it effectively stops development during its period of applicability. Such "interim zoning" can impose financial disaster on builder/developers, and can disrupt the market, not only during the moratorium period but for a long time after the restrictions are lifted. Where the interim ordinance is imposed because conditions have so changed that the community's existing "comprehensive plan" is outmoded, zoning modifications based on a new plan may result in major and "permanent" changes in uses permitted for a given parcel or sector. 29/ Thus, a moratorium zoning ordinance may lead to a complete frustration of purpose even with respect to land which, at the time of purchase, was zoned for the intended use.

Institutionally, the zoning process is equally applicable to alien and to domestic investors. Pragmatically, it has considerable potential for discriminatory and arbitrary application, and, as Richard Babcock so convincingly demonstrated, the "zoning game" 30/ is one best left to the professionals. Aliens are somewhat less likely to benefit from "special interest" zoning, 31/ though they may be able to "piggy-back" favored

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25/ See, e.g., LEFCOE, LAND DEVELOPMENT LAW (2d ed. 1974) at 889-891, and at 891, note 10. [Hereinafter cited as Lefcoe]; Cf., Sylvania Electric Products v. City of Newton, 184 N.E. 2d 118 (1962).

26/ See, e.g., Williams, supra, n. 17, Vol. 1 at §§ 30.01-30.06; Sussna, Developing Land in the Midst of the Environmental, Energy, Exclusionary, and Bureaucratic Maze [Hereinafter cited as Sussna], 1975 INSTITUTE ON PLANNING, ZONING AND EMINENT DOMAIN, SOUTHWESTERN LEGAL FOUNDATION, 1 at 20-21. [Hereinafter cited as Institute, Southwestern].

27/ Williams, supra, n. 17, Vol. 1, at § 30.05.

28/ E.g., K. G. Horton & Sons v. Board of Zoning Appeals of Madison County, 235 Ind. 510, 135 N.E. 2d 243 (1956) (interim ordinance held invalid when county readopted, one year at a time, for 10 years).

29/ E.g., MANDELKER, MANAGING OUR URBAN ENVIRONMENT (2d ed. 1971) at 64 [Hereinafter cited as Mandelker]. (Defendant township in Appeal of Girsh "did not rezone the tract in question for apartment use. Instead, it rezoned a quarry for apartments.").

30/ Babcock, supra, n. 20.

31/ E.g., ". . .[O]ne councilman. . .[said]. . .that on zoning questions he will vote for or against the zoning change based solely on the wishes of the people in the area. The neighbors. . . ." Babcock, supra, n. 20 at 92.

"players" through various forms of joint-venturing. Zoning itself is a mechanism which can respond to new and different social values and purposes related to pressing domestic problems. 32/ Alien investors may, therefore, find it difficult to confidently analyze their potentials in the field of new development and construction.

Subdivision Regulations.

Zoning codes divide a community into districts and prescribe the land uses permitted within each district. Subdivision regulations prescribe the patterns and components of new development. Early subdivision regulations included set-back distances from property lines, height restrictions, requirements for the provision of streets, waste disposal systems, water supply, etc. Modern subdivision regulations often require that developers provide public facilities at their own expense. 33/ Thus the sub-divider often must provide such things as school and recreation grounds, street lightings and markings, sidewalks, curbs, gutters and paving, in addition to right-of-way dedications, sanitary and storm sewer installations, underground telephone and electrical services. The subdivider may also be assessed the costs of linking his utilities to the community system and an aliquot share of the costs of expanding central production or treatment systems. 34/ He must pay the costs of governmental evaluation of his plans and specifications, and of compliance inspections. 35/ Local, state, regional, and federal environmental standards and compliances must be satisfied. 36/

These increasing demands provide additional assurance that a contemplated development will not only be internally sound, but that its potential economic and social value will not be depreciated by lesser quality developments in adjacent areas. However, the rapid expansion of development controls has created a considerable degree of uncertainty stemming from inconsistent application. In theory, arbitrary and capricious applications may be challenged in the courts. Pragmatically, the short-term financing which is common to development ventures, the dynamic and fast-changing consumer market, and its strong competitive nature often coerce developer compliance with demands felt to be improperly imposed.

32/ E.g., Oakwood at Madison, Inc. v. Township of Madison, 117 N.J. Super. 11, 283 A. 2d 353 (1971); Board of Supervisors v. Snell Construction Co., ___ Va. ___, 202 S.E. 2d 889 (1974).

33/ See, e.g., Mandelker, supra, n. 29 at 1052-53.

34/ See, e.g., Longridge Estates v. City of Los Angeles, 183 Cal. App. 2d. 533, 6 Cal. Rptr. 900 (1960).

35/ See, e.g., Santa Clara Contractors and Home Builders Assn. v. City of Santa Clara, 232 Cal. App. 2d. 564, 43 Cal. Rptr. 86 (1965).

36/ Cf., Just v. Marinette County, 56 Wisc. 2d. 7, 201 N.W. 2d. 761 (1972) (County Shoreland Zoning Ordinance.) See, also, Scenic Rivers Association of Oklahoma v. Lynn, 520 F.2d 240 (10th Cir. 1975), modifying 382 F. Supp. 69 (1974); cert. granted, Flint Ridge Development Co. v. Scenic Rivers Association of Oklahoma, 96 S. Ct. 444 (1976). [Hereinafter cited as Flint Ridge.]

The governing body's power to deny, or to delay issuance of, building permits, and to impose a stop-order for failure to comply with applicable restrictions or exactions is an ever present threat. Such power sometimes can be exercised in discriminatory ways without overstepping technical legal perimeters.

Housing Codes

Housing Codes, most of which have been enacted since 1954, 37/ establish in great detail standards for rental housing. Landmark Judicial "legislating," in housing code cases has done much to eliminate the common-law dominance of landlord over tenant, 38/ in some urban jurisdictions. These decisions are being followed in quick succession by courts in other sectors. This radical change in relative status between landlord and tenant has often depreciated the profitability of residential leasehold investments and increased the level of management responsibility which investors must exercise. One result may be that alien investor interest may limit itself to the high-income segment of the urban residential tenant market.

Building Codes

Building codes promulgate minimum construction standards acceptable to the enacting jurisdiction. Rooted in the police power concern for public safety, the administration of these codes has often been manipulated for the purpose of protecting markets for local industries, or even local distributors, against competitive products. This has been possible because of two factors: first, the prescription of building codes has traditionally been delegated to municipal governments under state enabling legislation; 39/ and second, under the technology available during the period when building codes were achieving general acceptance, the functional method for establishing community standards was to designate representative products. These products came to be treated as specific rather than general representations. Only in recent years has any significant evolution from "product" to "performance" standards occurred. 40/

37/ Hagman, supra, n. 17 at 278-79. City governments rushed to enact housing codes in order to meet the "workable program" amendments to § 101C of The Housing Act of 1949.

38/ Landmark cases include Brown v. Southall Realty Co., 237 A. 2d. 834 (D.C. App. 1968), Javins v. First National Realty Corp., 428 F.2d 1071 (D.C. Cir., 1970) Kline v. 1500 Mass. Ave. Apts. Corp., 439 F.2d 477 (D.C. Cir., 1970).

39/ This is generally true with respect to zoning, subdivision regulation, and housing codes, as well.

40/ See, e.g., ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, BUILDING CODES: A PROGRAM FOR INTERGOVERNMENTAL REFORM, 51-60 (1966). Innovative construction products and processes developed and accepted in European nations in recent years are excluded from many U.S. markets where "product" standards still apply.

Within a natural market area for building products and processes, a number of building codes may be applicable, each within its own political jurisdiction, and each one imposing a different set of requirements. This lack of standardization has often significantly increased construction costs, and barred access to markets for innovative products and processes. Where innovations might reduce labor costs, affected craftsmen and their unions have often fought attempts to modify the codes, arguing that the new products did not meet the local standards. Their real purpose, in many instances, has been to assure the continued "monopoly" of more labor-intensive products.

Recent pressures to convert to performance code standards, and the greater capacity of urban jurisdictions to make such conversions, have begun to reduce the chaos builders face where a natural market area envelops a number of contiguous municipalities. Private model-code organizations have succeeded in having their codes adopted by many urban communities. 41/ A number of states have begun reasserting state-wide control over some types of construction, converting, in the process, to performance standards. 42/ If this trend continues, the potential for manipulating building codes will gradually diminish.

Eminent Domain Powers

Eminent domain is one of the inherent powers of state sovereignty. 43/ Subordinate jurisdictions can exercise this power of condemnation only to the extent that it is specifically delegated by the state government. Many urban jurisdictions receive, by charter, power to condemn which is coextensive, within the municipal boundaries, with that of the state. To a lesser degree, many municipal governments are authorized to condemn land beyond their jurisdictional boundaries. States often delegate condemnation powers to other subordinate entities, such as special districts.

The major constraint on any exercise of the power of eminent domain is

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41/ The four major model codes are: The Building Officials' Conference of America (BOCA), which offers the "Basic Building Code," most widely adopted in the East and North Central areas; The International Conference of Building Officials (ICBO) Code, called the "Uniform Building Code," most prevalent in the Western states; The Southern Standard Building Code; and the National Building Code, published by the American Insurance Association, and adopted in about 1600 communities.

42/ E.g., CAL. HEALTH AND SAFETY CODE ANN., §§ 18000-18080 (re: mobile homes), § 19960 et. seq. (California Factory Built Housing Law) (West 1970, Supp. 1974).

43/ Obviously, the federal government also enjoys the power of eminent domain. Variations in state codes may be lessened in coming years, as a consequence of the approval and recommendation of a uniform code, August, 1974. See, NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM EMINENT DOMAIN CODE, Official Text with Comments (1975).

that it must be done for "public use," 44/ a term which is today very broadly construed. 45/ Where property is condemned, both federal and state constitutions require the payment of just compensation. 46/ Eminent domain should not be confused with the power of escheat, which can affect interests that pass by inheritance to aliens, in jurisdictions where they may not inherit a fee simple estate. 47/ In such jurisdictions, inheriting aliens may be statutorily permitted a grace period during which they may sell their interest. 48/ Aliens may be inclined to equate escheat with confiscation, however.

Although constitutional clauses describing eminent domain powers are simply worded, the power has been exercised under a cloud of confusion decried by many prominent writers. 49/ Real property is equally subject to condemnation whether owned by citizens or by aliens. The latter, however,

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44/ U.S. CONST., amend. V: ". . .nor shall private property be taken for public use, without just compensation." State constitutions have similar or identical wording; see, POWELL ON REAL PROPERTY (Powell and Rohan Abridged ed. 1968) at § 755. [Hereinafter cited as Powell].

45/ See, e.g., Morris, The Quiet Legal Revolution: Eminent Domain and Urban Development, 52 A.B.A.J. 355 (1966)[Hereinafter cited as Morris].

46/ See, e.g., Powell, supra, n. 44, at § 755.

47/ Descent and distribution statutes often designate the state as the ultimate "heir" in place of distant collaterals. Under the prevailing concept that land is held allodially, the state theoretically takes by escheat, not as an heir. Some statutes use the terminology "escheat to the state." Inheriting heirs usually are allowed a fairly liberal limitation period within which to establish their status. Upon failure to do so, they may be foreclosed. The state, however, has the burden of establishing the want of lawful heirs. Heirs of non-resident aliens, or non-resident heirs, may not become aware of their inheritance in time to preserve their interests. See, ATKINSON ON WILLS, §§ 24-26 (1937). Where aliens are forbidden to participate in corporate ownership, such investment could result in total forfeiture of their interest; see, Morrison/Krause, supra, n. 8 at 35. State statutes should be carefully examined because some have surprising exceptions. See, e.g., MISS. CODE ANN., §§ 9-1-23, which allows citizens of Syria and Lebanon to inherit land, even though there is a general proscription against nonresident aliens acquiring or holding land except by way of security for a debt.

48/ Jurisdictions prohibiting alien inheritance provide for sale within specified limitation periods, and specifically or by implication, provide for judicial sale if voluntary disposition is not effected, though the statutes permit the disability to be cured through acquisition of citizenship within the limitation period; Morrison/Krause, supra, n. 8 at 33.

49/ See, e.g., critical comments listed and cited in Kanner, When Is "Property" Not "Property Itself": A Critical Examination of the Bases of Denial of Compensation for Loss of Goodwill in Eminent Domain, 6 CAL. WESTERN L. REV. 57, 58 (1969)[Hereinafter cited as Kanner].

may be more susceptible to misunderstandings regarding the power and its exercise.

There is a greater possibility in urban areas that comprehensive land use control regulations will exceed permissible police power limits and in so doing constitute a "constitutional taking," 50/ entitling the subject property owners to "just compensation." Condemnation by urban renewal or public housing authorities is more likely to occur in urban areas. Aliens may be less likely to anticipate such possibilities, or to make adequate provision therefor in transactional documents.

Specific Purpose Public Health and Safety Codes

Codes under this category, originating with either state or municipal-level governments, impose additional constraints on owners whose property presents extraordinary public risks. All urban areas have special codes governing electrical, plumbing, and steam boiler installations. Elevators, fire escapes, common areaways in public buildings, etc., often are subject to specific design and inspection procedures. Theatres, hospitals, convalescent homes, schools, and recreation buildings similarly are subject to specific safety-oriented prescriptions beyond those set forth in the general housing and building codes. Some states have enacted area-specific special construction requirements for sectors exposed to hurricanes, earthquakes, and other natural hazards. Urban areas may be better equipped to design, apply, and enforce such codes, but this is not necessarily reflected in actual situations.

Public- and Quasi-Public Utility Service Organizations and Programs

Urban areas have frequently found it impossible to effectively expand utility and other services apace with demand. This has been particularly true in the more rapidly growing of our urban areas, some of which have experienced utility-service deficiencies that approach disaster status. Inability to accommodate increasing demands have often stimulated schemes to delay provision of services or to divert further development to other

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50/ "Constitutional Taking" is a term used to describe a governmental interference with private property rights of sufficient severity to impose the constitutionally prescribed duty to provide "just compensation." User constraints imposed as regulatory measures sometimes are found by the courts to fall into the status of an acquisition or "taking" by the government. See, generally, F. BOSSELMAN, D. CALLIES, J. BANTA, THE TAKING ISSUE (1973)[Hereinafter cited as Taking Issue].

jurisdictions. 51/ Alien investors may find themselves subject to de facto discrimination in such situations, and effective remedies are not readily available.

Ad valorem Property Tax and Transfer Tax Programs

Ad valorem property taxes, traditionally assessed at county and municipal levels, have been criticized as being overly-regressive, as being increased in a disparate manner, as giving preferential treatment to apartment owners, and as being overly-burdensome. Many have argued for their replacement. 52/ The constantly growing need of municipal governments for additional revenues stimulates a continuing search for politically less-sensitive tax sources. Alien investment-property owners may feel particularly vulnerable to the risk of high tax-related appraisals; accordingly, they may want to maintain the privacy of their investment identities. Our present system of public land records does provide considerable opportunity for maintaining such privacy. Business forms that may provide concealment are indicated above. 53/

Transfer taxes 54/ and regulations governing conveyancing also are becoming more burdensome. 55/ However, there is no apparent need for aliens to be any more sensitive than are domestic investors to these trends.

51/ E.g., ". . . Since February 1973 the New Jersey E.P.A. has ordered 79 municipalities not to issue any more building permits until their sewage systems have been brought up to ecological standards. From direct dealings with many of these 79 municipalities, this writer knows that they are not too anxious to upgrade their sewage systems. They just do not want more development growth. . .", Sussna, supra, n. 26, at 3; see, e.g., City of Colorado Springs v. Kitty Hawk Development Co., 154 Colo. 535, 392 P. 2d 467 (1964). Cf., Robinson v. City of Boulder [Colorado], Dist. Ct., Action No. 72-2033-1 (1974), discussed, 2 MANAGEMENT AND CONTROL OF GROWTH, THE URBAN LAND INSTITUTE (R. Scott, ed.) Ch. 10, p. 237 (1975); Belle Harbor Realty Co. v. Kerr, 43 App. Div. 2d, 727, 350 NYS 2d. 698 (1973).

52/ See, e.g., Mandelker, supra, n. 29 at 42.

53/ See, text, supra, pp. 4-6

54/ Both state and local governments have often imposed a tax on real property transfer. Montgomery County, Md., for example, assesses a transfer fee of 1/2 of 1% on the sales price, which is in addition to the 1% state tax.

55/ The Real Estate Settlement Procedures Act of 1974 (as amended) (RESPA), 12 U.S.C. §§ 1601-12, superimposed federal regulation. RESPA has not been well received. Some amendments have been made and others are probable. See, e.g., W. McAuliffe, RESPA Changes. . . And What They Do, W. Post, Jan. 10, 1976, at D.1, col. 2-7; B. Kass, R-E-S-P-A: Dead or Still Alive, W. Post, Jan. 17, 1976, at D.1, col. 1-4.

Other Public Control Processes and Institutions

Some sectors of the nation are subject to unique natural hazards. Perhaps the best known risk is repetitive flooding. Attempts to protect against flood hazards have produced various programs at federal, state, and municipal levels, ranging from containment projects to "flood plain" zoning and building codes. Such controls are hazard-specific in locational applicability and thus are not unique to urban sectors. Neither do they incorporate any prejudice against alien investors. Nevertheless, such investors should be alert to the risks and should anticipate that public controls over development and land use will increase, with some sectors being subjected to severe use-limitations.

Local Area Private Land Use Management and Control Processes

Property Owners' Associations (Covenants, Conditions and Restrictions at Work)

A tract of land or building subjected to multiple owner-occupancy usually requires the establishment of a representative owner-management regime to perform ordinary maintenance over elements of the property shared by some or all of the occupants, and to assure compliance with the by-laws agreed to. In effect, a limited private "government" is created among the owners. Such organizations are identified as property-owners' associations. 56/ Often given a corporate status, they must operate under some form of charter and a set of by-laws. The participants are bound contractually, usually through deed covenants designed to assure effective representative management. Violation of the covenants, conditions and restrictions agreed to may subject the occupant-owners to specified penalties, sometimes extending to compulsory sale of their interest to the association.

Developers have found the property-owners' association attractive because it makes possible the transfer of managerial responsibility and the retrieval of the front-money utility investment, once the development project has been completed. Responsibilities and controls established for some of these associations have become very complex, giving rise to many problems and to considerable litigation. For example, the extent to which the burdens and benefits of covenants can be so attached to the subject real estate that they will affect any subsequent owner, has not been clearly resolved.

Property-owners' associations may be of particular interest to those alien investors who contemplate catering to a high-income urban market, whether within the context of a permanent or of a recreational-home development. Effectively used, they can help to assure that the development has an attractive marketing potential. Therefor the investor needs

56/ See, Lefcoe, supra, n. 25, at 726-27.

expert legal counseling on how to structure and to provide continuing management for the institution and how, when, and to what extent to divest himself of any responsibilities he initially assumes.

The Condominium Association and Evolving Public Controls Concerned Therewith

Condominium ownership, long known to many other nations, was seldom used in the United States until the first state enabling statutes were passed in 1962. 57/ Within a decade most other state legislatures had followed suit, but some of the initial enabling legislation has proved inadequate. Now "second generation" condominium statutes are emerging from the various state legislatures. 58/ Concurrently, some municipal governments are becoming aware that all is not golden with respect to condominium "conversions." 59/ They are considering or have enacted 60/ measures restricting conversion of rental properties to condominium ownership.

Many prospective or recent U.S. purchasers of condominium property do not fully understand the significance of the fact that they are buying a participating share in a private neighborhood "government" which will exert substantial control over what rights and duties they incur as unit owners. The association must function effectively over a long period of time, and survive disputes that are often heated. A recent well-publicized furor in Northern Virginia provides an example. That situation involved a large corporate owner of a residential complex undergoing renovation and conversion from rental to condominium property status. The initiating event, per newspaper reports 61/ was the cash sale, at a substantial discount, of a number of condominium apartments. The buyer was a

57/ The rush to enact state condominium (horizontal property) acts was stimulated by the 1961 Amendment to the National Housing Act of 1954, authorizing FHA mortgage insurance for condominiums. NATIONAL HOUSING ACT, § 234, 12 U.S.C.A. § 1715Y (Supp. 1965).

58/ See, e.g., Johnakin, A Second Generation of Condominium Statutes, LAWYERS TITLE NEWS, May-June 1974, at 3. A recent example is Title 11, MD. ANN. CODE, REAL PROPERTY (1975 Cumm. Supp.)

59/ See, e.g., HEARINGS BEFORE THE SUBCOMMITTEE OF HOUSING AND URBAN AFFAIRS OF THE SENATE COMMITTEE ON BANKING AND HOUSING, 93rd Cong., 2d. Sess. (1974), 114-19 (testimony of D. Clurman, Asst. Atty. Gen., State of N.Y.)

60/ New York City requires that 35% of the tenants in a building being subjected to conversion to condominium status subscribe to the plan, as a prerequisite to acceptance for conversion. N.Y. Gen. Bus. Law, Sec. 352-3(2a)(1)(i)(McKinney Supp. 1974). See, Richards v. Kaskel, 32 N.Y. 2d 524, 347 N.Y.S. 2d. 1, 300 N.E. 2d 388 (1973), (tenants in class action, attempt to block such a conversion). The District of Columbia government is currently considering similar legislation (proposed Shackleton Amendment to D.C. Bill No. 1-179, Title V).

61/ Iranians Create Furor in Fairlington, W. Post, Aug. 10, 1975 at D.1, col. 1-5; Fairlington Group to Fight Iran Deal, W. Post, Aug. 15, 1975, at C.3, col. 7-8.

small group of private alien investors, who apparently acquired the units as income-producing properties. The discount aspect of the sale and the prospect of occupancy of some units by lease-hold tenants, who, because of their temporary status presumably would not have the same maintenance, social and managerial interests as would owner-occupants, generated apprehension among some of the latter. They informally organized to challenge the propriety of the bulk sale to the alien investors. Misunderstandings or dissatisfactions of this nature, which may dampen sales by generating undue publicity, often can be foreseen and avoided by meticulous drafting of the condominium declaration and by-laws.

The Role of Local Realtors and the Significance of Applicable Regulatory Processes

Marketing and financing skills available from realtors are of special value to urban investors. Realtor licensing laws, and strict codes of ethics subscribed to by members of the national realtor associations generally assure high standards of performance. The well publicized "blockbusting" 62/ efforts of a few unscrupulous real estate manipulators have been vigorously opposed by professional realtors. Federal legislation 63/ and judicial decisions 64/ have largely eliminated racial discrimination in the conveyancing field. Alien developers or owners of real property offered for sale or lease will be as much subject to civil rights laws as are realtors who act as sales agents for them.

It is not clear whether an alien developer is under any constraint against offering property for sale or lease under a marketing program completely conducted outside of the United States. Whether non-resident aliens in the United States who are subjected to discrimination based on their nationality have full recourse to the courts may be controlled by reciprocity treaties. But where state statutes specifically provide

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62/ See, Contract Buyers League v. F. & F. Investment Co. 300 F. Supp. 210 (N.D. Ill. 1969), aff'd sub. nom. Baker v. F. & F. Investment, 420 F.2d 1191 (7th Cir., 1970). See, also, State v. Wagner, 15 Md. App. 413, 291 A. 2d 161 (1972) (Defendant charged with violating Maryland's "Blockbusting" Statute, MD. CODE ANN., ART. 56, § 230A, Ch. 285, Acts 1966). "By codifying the Act under the subtitle, 'Real Estate Brokers,' it was undoubtedly recognized by the legislature that the persons most likely to engage in 'blockbusting' would be those commercially involved in the buying and selling of real estate." State v. Wagner, at 423, 166, note.

63/ TITLE VIII, CIVIL RIGHTS ACT OF 1968; 18 U.S.C.A. § 245 et. seq.; FAIR HOUSING ACT OF 1968, 42 U.S.C.A. § 3605(e) (1970).

64/ See, e.g., Jones v. Alfred H. Mayer Co., 392 U.S. 409, 88 S. Ct. 2183, 20 L. Ed. 2d. 1189 (1968).

that aliens may acquire fee simple title in real estate 65/ such legislation may very well bring them within full statutory and constitutional protection against discriminatory practices. Where the statutory provisions are not clear and where statutory limits are imposed on alien inheritance, the question of what remedies are available to non-resident aliens is not fully settled.

Locally Active Builder-Developers and Pertinent Regulatory Processes to Which They Are Subject

The major influence that locally active builders and developers can exercise either pro- or con- with respect to alien investors is socio-political in nature. Not only do such individuals have, as taxpayers and voters, a vested interest in governmental decisions, but they often have a considerable influence with government personnel who administer the regulations. Their financial capacity to advertise, lobby, develop persuasive arguments, litigate, etc., sometimes induces them to "lean on," if not to coerce, local officials. These capacities can be exercised with a high degree of sophistication by individuals and by their local "trade association" institutions.

Coordination between building material producers and distributors, craft and other unions, financing institutions, and the builder-developer groups often provides considerable leverage where their interests coincide. Such cooperation can be generated either by perceived threats to, or advantages favoring, their well-being. Generally, this group supports activities that will improve their funding opportunities. They are likely to oppose "outsiders" who attempt to enter the local market in a competitive status, whether with products that may jeopardize the control and profit-making of local participants, or through direct competition as builders, developers, or craft-skilled workers.

It is true that entry by an "outsider" may be perceived by one component of the industry as beneficial, while another sees it as detrimental. Nonetheless, almost any builder who has on occasion either ventured beyond his "home market" or has seen "outsiders" penetrate the local market, can speak with first-hand knowledge about the tactics sometimes used by "locals" to protect their "home turf." The most visible protective processes are local licensing provisions affecting contractors and sub-contractors, the inspection procedures by which building, safety and sub-division codes are administered, and local trade union practices in applying the union rules under which a member obtains permission to work outside the jurisdictional boundaries of his local union. All these controls can be exercised in an arbitrary and subjective manner. Less well known are the more coercive tactics sometimes employed, not

65/ MD. ANN. CODE, REAL PROPERTY, § 14-101: "Any alien who is not an enemy, may own, sell, devise, dispose of, or otherwise deal with property in the same manner as if he had been a citizen of the State at birth."

always stopping short of indictable acts. 66/

The alien seeking to enter the market is probably no more vulnerable than is a domestic "outsider." But that degree of vulnerability can be discouraging. Like it or not, the "outsider" is well-advised to attempt to ascertain how his "intrusion" will be received before he jumps in.

Local Financing Institutions and Applicable Regulatory Processes

In general, well-established urban financial institutions are more efficient, better operated, better financed, less subjective, and less inclined to incorporate prejudice into their decision-processes than are some of their "country-cousins." An alien investor can generally feel more confident that he will receive routine consideration when dealing with urban institutions.

Though the regulations are being gradually chipped away, many mortgage lenders are statutorily limited in their geographical areas of operation. The alien investor may be unaware of that situation, of statutory limits on the amount of an individual loan, or of the percentage of assets a lender may be required to retain as a reserve. From most practical and legal aspects, however, the alien is under no unique official constraints as an investor or borrower, in dealing with the usual mortgage financer.

Local Attitudinal Considerations

The alien investor may be subjected to unofficial discriminatory treatment, usually camouflaged with official technicalities. He is vulnerable, along with other investors, to community policies relating to growth-related problems. He may get caught up in project-stopping statutory applications that can be costly. Domestic investors, though no less chagrined or angered by such a situation, may be more aware of such risks. The alien may see these applications as being specifically discriminatory against him. Here, again, competent investment counseling by those who fully understand a local market can help eliminate misconceptions and clarify the risks inherent in contemplated investments.

State and/or Regional Public Institutional
Land Use Management and Control Programs and Processes

Environmental, Ecological, Conservational, and Preservational Institutions, Programs, and Processes

A detailed discussion of this category is beyond the scope of this paper.

66/ The reference to possible criminally coercive activities is based on events, including apparent extorsion, arson, vandalism, assault and theft, observed by or visited upon the author during 15 years experience in the material supply and construction businesses.

Since many of these controls are applicable in all sectors, alien investors must take them into consideration. Land developers and builders need be concerned with the National Environmental Policy Act (NEPA) 67/ and particularly with the impact statement required by § 102(2)(c).68/ Guidelines promulgated by the Council on Environmental Quality 69/ should help alien investors who face for the first time NEPA-E.I.S. requirements.

The Federal Clean Air Act of 1970, 70/ the Federal Water Pollution Control Act Amendments of 1972 (FWPCA), 71/ the National Coastal Zone Management Act of 1972, 72/ the Resources Recovery Act of 1970, 73/ and the Noise Control Act of 1972, 74/ are other federal statutes which have land use control implications. Nearly one-fourth of the states have passed their own environmental quality acts, closely patterned on NEPA, 75/; some of these have been applied to halt private projects already approved by local government. 76/ In one case, at least, judicial decision upholding such an application has led to legislative modification. 77/ Some county governments have also incorporated special regulations controlling

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67/ 42 U.S.C. § 4321 et. seq. (Supp. II, 1972).

68/ 42 U.S.C. § 4332(2)(c). See, Flint Ridge, supra, n. 36.

69/ 38 Fed. Reg. 20550 (1973), 40 C.F.R. § 1500.1 (1974).

70/ 42 U.S.C.A. §§ 1857-58a (1970). amending 42 U.S.C.A. §§ 1857-57(1).

71/ 33 U.S.C.A. §§ 1251-1376 (Supp. II, 1972) Mandelker, supra, n. 29. (1974 Supp.) at 183, comments, regarding the proviso which permits the state or the EPA Administrator to proceed by court action to restrict or prohibit the introduction of any pollutant into treatment works, that its "effects. . . on urban growth patterns could well be momentous." See, 40 C.F.R. § 126.10 (1973) for EPA guidelines promulgated pursuant to section 208 of the Act (P.L. 92-500), which provides for area-wide management under a "new type of 'intergovernmental environmental compact.'" See, also, Bosley, National Environmental Policy: The Metropolitan and Regional Dimension, Institute, Southwestern, supra, n. 26, p. 105, 119.

72/ 16 U.S.C. § 1451 et. seq. (Supp. II, 1972).

73/ 42 U.S.C.A. § 3257 et. seq.

74/ 42 U.S.C.A. § 4901 et. seq.

75/ See, generally, Hagman, NEPA's Progeny Inhabit the States--Were The Genes Defective? 1974 URBAN L. ANN. 3 [Hereinafter cited as NEPA's Progeny]. The state acts are sometimes referred to as "SEPAs" (Hagman), sometimes as "little NEPA's" (Mandelker).

76/ E.g., Friends of Mammoth v. Board of Supervisors of Mono County, 8 Cal. 3d 247, 104 Cal. Rptr. 761, 502 P. 2d 1049 (1972) (applying the CALIFORNIA ENVIRONMENTAL QUALITY ACT)(CEQA) [discussed in NEPA's Progeny, supra, n. 75].

77/ See, CALIF. PUB. UTIL. CODE §§ 21060.5, 21080, 21083, 21166, 21167 (Deering, 1970, Supp. 1975) and comments in Hagman, supra, n. 17 (1975 Supp.) at 556.

such ecologically sensitive sectors as "wetlands" into their zoning codes, 78/ under the powers delegated by state governments.

How far such controls will evolve, institutionally, substantively, and procedurally, and with what balancing of conflicting interests, is impossible to predict. Uncertainties thus remain a matter of concern, and should dictate caution on the part of both alien and domestic investors in land development projects.

Consumer Protection Processes

A strong majority of the states have enacted laws similar in purpose to the Federal Interstate Land Sales Full Disclosure Act 79/ to regulate the sale of out-of-state lands. 80/ More than one-fourth have also enacted laws regulating intra-state land sales. 81/ Most of these statutes regulate only sales of undeveloped subdivided land. Only a few are patterned after the Uniform Land Sales Practices Act, 82/ and from state to state the variations are sufficient to make compliance difficult for developers who want to enter a multi-state market.

Covered developers are required to make full disclosure of specified information to a designated governmental entity. Not all states require the further step of giving a summary of this information directly to prospective purchasers. In some states, offerings may be prohibited if the disclosure indicates non-compliance with state regulations. A few states prohibit sales which constitute fraud. A very few follow California's lead in authorizing the appropriate state office to prohibit development if the project is deficient under a "fair, just and equitable"

78/ E.g., Just v. Marinette County, 56 Wisc. 2d. 7, 201 N.W. 2d. 761 (1972) contesting validity of Marinette County's Shoreline Zoning Order No. 24, Sept. 19, 1967; Cf., Kmiev v. Town of Spider Lake, 60 Wisc. 2d. 640, 211 N.W. 2d. 471 (1973) (testing agricultural zoning). Compare, Gisler v. County of Madera, 39 Cal. App. 3d. 303, 112 Cal. Rptr. 919 (1974).

79/ 15 U.S.C.A. §§ 1701-20 (1974, Supp. 1975); see, generally, Ingersoll & Bloch, Federal Laws Affecting Land Sales Practices: A Guide to Salesmen, 1 AMER. LAND 3, 4 (1972)[Hereinafter cited as Ingersoll & Bloch].

80/ "Similar laws have been enacted by 36 states, regulating the sale of out-of-state lands; . . ." Lefcoe, 2d. ed., supra, n. 25, at 281.

81/ Id. (Fourteen states).

82/ "A few of the states have copied the Uniform Land Sales Practices Act, but each of the rest has adopted a different and often unique approach." G. NELSON AND D. WHITMAN, REAL ESTATE FINANCE AND DEVELOPMENT: CASES AND MATERIALS (1976), at 564, quoting Note, Regulation of Interstate Land Sales, 25 STAN. L. REV. 605 (1973).

standard. 83/ Most state legislation incorporates specified exemptions, unfortunately with little uniformity. Even where the statutory language is similar, there are differences in interpretation and application. Specifics of disclosure not only vary from state to state, but often differ from the Federal Act requirements. Only four states have qualified to have their regulations substitute for the Federal requirements. 84/ Every state has a designated office from which information relating to sub-divided land offerings may be obtained. Some of these offices have regulatory jurisdiction over sales; others are limited to policing sales personnel associated with some projects. Various penalties for violation are found among the several state statutes, including criminal sanctions and punitive damage clauses. In several jurisdictions, the state Blue Sky Laws are applicable, 85/ and developers are required to register with the state securities regulation office. To further complicate the situation, conflict-of-laws situations may perplex the well-meaning developer.

In addition to consumer protection controls keyed to the marketing process, all states have made some effort to exercise direct control over land-use. Most of these efforts have been of limited scope, specifically directed toward such matters as statewide Land Use Planning, Coastal Zone Management, Wetlands Management, Power Plant Siting, Designation of Critical areas, Land Use Tax Incentives, and the aforementioned Flood Plain Management. 86/ Statewide building codes are beginning to emerge, though they are not yet comprehensive. 87/ Many states have established "Little NEPA's," to supplement the protections of the federal act. 88/ Solid waste disposal, noise and more recently energy development, have become subjects of state-level decision-making directly relating to land-use management.

83/ See, W. THOMAS, A REGULATOR LOOKS AT "FAIR, JUST AND EQUITABLE", REAL ESTATE VENTURE ANALYSIS: GUEST FORUM 303-307(1973); (quoted in Lefcoe, 2d. ed., supra, n. 25 at 294; but see Hagman, supra, n. 17 at 267.

84/ Hagman, supra, n. 17 at 268, and citations at note 4; Ellis, Land Sales Full Disclosure Laws: Federal and Illinois, ILL. B.J., Sept. 1971 at 16, n. 3, lists these states as Calif., Fla., Hawaii, and N.Y.

85/ Id., at 266. See, e.g., Matter of Robert T. Sidebotham, 12 Cal. 2d 434, 85 P.2d 453 (1938), cert. den., 307 U.S. 635, 59 S.Ct. 1031, 83 L. Ed. 1516 (1939). See, generally, Steuben, supra, n. 15 at 737-742 and 1975 Supp. at 39.

86/ See, e.g., state by state summary in LAND USE, Reprinted from the Fifth Annual Report of the Council on Environmental Quality, at Appendix, Recent State Land Use Regulations (1974). [Hereinafter cited as Land Use]. See, also, 3 MANAGEMENT AND CONTROL OF GROWTH, THE URBAN LAND INSTITUTE, Appendix at 325-6 (R. Scott, ed.)(1975). [Hereinafter cited as 3, ULI].

87/ See, for summary of current state-wide code coverages, 3 ULI, supra, n. 86 at 383-4. For reference to representative statutes, see supra, n.42.

88/ See, e.g., NEPA's Progeny, supra, n. 75.

A few states, reacting to unique stress situations, have gone far beyond the others in assuming substantial levels of control over land use. Foremost among these is Hawaii, which created, in 1961, a statewide Land Use allocation program, 89/ dividing the state into four districts, conservation, agricultural, rural, and urban. Under that legislation, urban district land use controls were vested in county governments; regulation of conservation districts was assigned to the State Department of Land and Natural Resources; the other two districts were put under the Land Use Commission, which was also given sole decisional power to approve changes of use classification. By 1973 the system had been sufficiently tested to demonstrate significant deficiencies. Legislative modification in 1973 and 1974 gave emphasis to the "carrying capacity" of the state, and to the need for growth management under centralized authority. 90/

Florida, also faced with tremendous population increases, enacted four major bills in 1972, the Environmental Land and Water Management Act, the Land Conservation Act, the Water Resources Act, and the Florida Comprehensive Planning Act. 91/ Patterned on the Model Land Development Code of the American Law Institute, and concentrating on "critical areas" and "developments of regional impact," Florida's legislative efforts have become a "landmark" example which other states are watching closely.

In 1970, Vermont passed its Land Use and Development Act, 92/ "one of the first statewide permit systems for large development," 93/ in response to the increasing interest in state land by large-scale vacation home developers and land speculators. Considered on enactment to be an admirable model, the act has recently been subjected to strong criticism, stimulating the legislature to postpone implementation of the third phase of the 1970 prescription. 94/

89/ HAWAII REV. Ch. 205. See, generally, F. BOSSELMAN & D. CALLIES, THE QUIET REVOLUTION IN LAND USE CONTROL, 5-53 (1971)[Hereinafter cited as Quiet Revolution]; Denney, State Zoning in Hawaii: The State Land Use Law, 18 ZONING DIG. 89 (1966).

90/ See, 3 ULI, supra, n. 86 at 333.

91/ FLA. STAT. ANN. §§ 380.012-10 (Supp. 1973); see, 3, ULI, supra, n. 86 at 334-36, and Finnell, Saving Paradise: The Florida Environmental Land and Water Management Act of 1972, 1973 URBAN L. ANN. 103-136.

92/ VT. STAT. ANN., Title 10, § 6086 (Supp. 1970), discussed, 3 ULI supra, n. 86 at 336; Quiet Revolution, supra, n. 89 at 54; Mandelker, supra, n. 33, at 1138.

93/ 3, ULI, supra, n. 86 at 336.

94/ See, e.g., Land Use, supra, n. 86 at Appendix, p. 91.

Colorado 95/ and Maine 96/ have also led in the trend toward centralizing of control over some critical land-use issues. Delaware 97/ has shown legislative concern over industrial development in coastal areas. Wisconsin's Water Resources Act 98/ reflects strong concern with shoreland protection. Massachusetts has imposed a state-level permit system to control development of coastal and inland wetlands. 99/ Alaska, Georgia, Maryland, North Carolina, Rhode Island and Washington have in the last few years begun to give major attention to state-wide land use controls for specific, limited purposes; 100/ the trend appears to be towards expanded coverage.

Some states have recently enacted laws imposing penalties on speculative builders whose products do not reach acceptable quality levels. 101/ These laws have followed landmark judicial proceedings which began the swing away from the long-prevailing doctrine of caveat emptor. 102/

This summary list only indicates the variety of the land-use control measures to which a contemplated development project may be subject. In most instances, there is no specific distinction between urban and non-urban application. However, the legislative trend towards centralized controls demonstrates a primary concern about uncontrolled development. Most problems stem from migration to urban areas, and are related to the demands that such population concentrations impose on the supportive infrastructure and on natural resources. In urban areas, where investment markets in real estate are particularly attractive, investors are likely to encounter intensifying state-level efforts to correlate, if not to directly control, land use allocations. Because this trend is counter to the traditional pattern of local autonomy, and is still in its early stages of transition, one must expect to encounter confusion, conflict, and instability in the land-use management programs affecting the urban real estate investment arena. Decision-makers might be properly concerned over whether too much instability and uncertainty could so disrupt this investment market that desirable alien participation may be diverted

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95/ See, e.g., Quiet Revolution, supra, n. 89 at 300.

96/ 39 ME. REV. STAT. ANN., §§ 481-88 (Supp. 1970)(Site Location Law); see, generally, Quiet Revolution, supra, n. 89 at 187-204.

97/ DEL. CODE ANN. Tit. 7, §§ 7001 et. seq. (1971)(Non-cumm. Supp. 1972); see, Beckman and Finsen, Urban Growth Legislation: The Federal and State Response 1971, in 1973 URBAN L. ANN. 149 at 183.

98/ WISC. STAT. ANN. § 59.971(4); see, Quiet Revolution, supra, n. 89, at 235-261.

99/ §27A (JONES ACT) and §105 (COASTAL WETLANDS ACT OF 1965), 130 MASS. GEN. LAWS ANN. (Supp. 1971).

100/ See, Quiet Revolution, supra, n. 89 at 301-306.

101/ MD. CODE ANN. Art. 21, §10-201 et. seq. (1973).

102/ See, e.g., Schipper v. Levitt & Sons, Inc., 44 N.J. 70, 207 A. 2d. 314 (1965); Cf., The Rocky Road to Home Warranties, BUSINESS WEEK, July 28, 1973 (re: The National Assn. of Home Builders Warranty Program); Lefcoe, 2d ed. supra, n. 25 at 213 (NAHB Stmt. to members, Sept. 12, 1973).

elsewhere, perhaps beyond our national boundaries. The least that could be done, for aliens and for domestic participants, would be to provide information about the limitations, exactions, and restrictions to which urban real estate investors will be subjected, and to seek to avoid compounding the costs of requisite compliances.

Flood Plains, Hurricane Codes, Conservation Zones, etc.

Congress, in 1968, passed the National Flood Insurance Act, 103/ which provides a federally subsidized flood insurance program for residential, business and agricultural structures in flood-prone areas. As a prerequisite for coverage, state and local governments must adopt and enforce land-use and control measures that will curtail land development in flood plains. In 1969 this act was amended 104/ to require that mudslide-area restrictions be incorporated into the state/local regulations. The act also provides that to the extent an owner could have obtained flood insurance but failed to do so, no federal disaster assistance would be available to reimburse losses occurring after December 31, 1973. 105/ So far, there has not been a great rush by State and local governments to qualify under this program. Recent bills to provide somewhat similar coverage for various other catastrophic potentials 106/ were not enacted into law, but indications are that similar bills will be re-introduced in 1976.

Disaster-vulnerable areas sometimes are subject to state requirements that structural designs incorporate hazard-resisting capabilities in order to qualify for building and occupancy permits. In parts of Florida, for example, buildings must be able to withstand hurricane-force winds, while in California, seismic stresses must be designed against. California has required that land-development projects sited within specified distances from known fault-lines must disclose the fact in all sales offerings. Occasionally, occupancy alone is sufficient to subject homeowners to hazard-related local ordinances. For example, the Municipal Code of the City of Los Angeles makes it a crime for a property owner to fail to repair a landslide which constitutes a public danger. 107/

103/ 42 U.S.C.A. § 4011 et. seq. (1970).

104/ 42 U.S.C.A. § 4001(f). See, generally, HUD News, THE NATIONAL FLOOD INSURANCE PROGRAM, Questions and Answers, March 8, 1972.

105/ NATIONAL FLOOD INSURANCE PROGRAM, 24 C.F.R. § 1901 et. seq. (1970).

106/ H.R. 4772, 93rd Cong., 1st Sess. (1973); H.R. 16569, 93rd Cong., 2d Sess. (1974).

107/ D. HAGMAN, PUBLIC PLANNING AND CONTROL OF URBAN AND LAND DEVELOPMENT, CASES AND MATERIALS (1973) [Hereinafter cited as Hagman, Test], at 966-69; (excerpts from Meager, 2-Way Loss Angers Slide Victims, L.A. Times, Sept. 8, 1969, Sec. C., at 1).

California's Environmental Quality Act (CEQA) is perhaps the most extensive of the "SEPA's", and has given rise to some attention-getting judicial decisions. 108/ Wisconsin's shorelands protection laws have also produced some landmark litigation. 109/ Several states have enacted laws to regulate strip-mining. 110/ Historic preservation 111/ has been a highly volatile issue in Alexandria, Virginia, in New Orleans, in San Francisco, and elsewhere.

Effective control over the pace and the direction of development may rest in the hands of special administrative agencies, such as the Washington Suburban Sanitary Commission in the Washington, D.C. area. Local area councils of government sometimes have the capacity to impede development while lacking the authority to direct or manage it. A developer caught up in some of these delay-imposing situations often has no effective recourse but to swallow his frustrations and absorb the economic costs which result.

"Public Trust" Institutional Arrangements (Compacts, Cooperation Agreements, etc.)

Some institutional arrangements provide effective management of unique natural resources which lie within the borders of more than one state. One of the more widely known is the Lake Tahoe Regional Planning Compact, entered into by California and Nevada. 112/ This compact establishes an agency specifically empowered to plan, within described guidelines, and to regulate, with respect to a detailed list of substantive powers, the development of the 500 square miles within its jurisdiction. Agency planning must be carried out in collaboration with state, county, and local planning organizations. The public, as well as the agency, may initiate amendments to the plans. Within its primary goal of preventing further degradation to and improving the quality of the water of the unique Lake Tahoe, the Agency appears to have been achieving noticeable success. The effort has not been without continuing conflicts and challenges, however. 113/

On a multi-county but intra-state level, the New York Adirondack Park

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108/ E.g., Friends of Mammoth v. Board of Supervisors of Mono County, supra, n. 76 (applying C.E.Q.A.); Cf., Nestle v. City of Santa Monica, 6 Cal. 3d. 920, 101 Cal. Rptr. 568, 496 P. 2d 480 (1972).

109/ E.g., Just v. Marinette County, supra, n. 78.

110/ See, Land Use, Appendix, supra, n. 86.

111/ See, generally, 35 LAW AND CONTEMPORARY PROBLEMS NO. 3 (1971) (entire issue).

112/ See, Quiet Revolution, supra, n. 89, 291-93.

113/ E.g., People ex rel. Younger v. County of El Dorado, 5 Cal. 3d. 480, 96 Cal. Rptr. 553, 487 p. 2d 1193 (1971).

Agency Act 114/ established a commission to prepare a land use and development plan applicable to all private land within its 9,470-square mile jurisdiction.

The commission is directed to adopt rules and regulations for review of proposed development. Commission approval is a prerequisite to actual development. Some pre-existing local government land-use control is maintained under the Act, but local controls enacted after July 1, 1971 must be consistent with the objectives of the Commission.

California's Local Agency Formation Commission (LAFCO) 115/ program was created to bring about orderly urban development. Each county in the state has such a commission. One responsibility of these commissions is to determine whether existing municipal boundaries should be expanded or whether a new municipality or a special purpose district should be created instead. Urban-fringe developers seeking municipal annexation must cope with this additional evaluation process.

In 1971, five southern states entered into an Interstate Environmental Compact aimed at multi-state action for environmental protection. 116/ The New England River Basin Commission is another environmentally oriented program with a regional approach. 117/

"There is general recognition of a common-law public trust doctrine which ordains a public easement in navigable waters for commerce, navigation and fisheries." 118/ Marshlands and tidelands have been subjected to title disputes involving this principle. Its reach being uncertain, environmentalists have sought to expand it, but in some recent litigation, property owners have successfully defended against its application on the basis of estoppel arguments. Some states have attempted to overcome the uncertainty of the public trust doctrine's application by specific legislation. Wisconsin's Shoreland Protection Law and the San Francisco

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114/ N.Y. EXECUTIVE CODE, § 800 et. seq., (McKinney, 1971); see, Quiet Revolution, supra, n. 93 at 295-99; Hagman, text, supra, n. 107 at 117-19 (table comparing Tahoe Regional Planning Compact, Vermont's "Act 250," and the Adirondack Park Agency Act.); Booth, The Adirondack Park Agency Act: A Challenge in Regional Land Use Planning, 43 GEO. WASH. L. REV. 612 (1975).

115/ CALIF. GOVT. CODE § 54796 (West Supp. 1974); see, e.g., Hagman text, supra, n. 107, at 265-66 (Ventura County's Lafco Guidelines); see, also, City of Ceres v. City of Modesto, 274 Cal. App. 2d 545, 79 Cal. Rptr. 168 (1969).

116/ FLA. STAT. ANN. § 403.60 (Supp. 1973); GA. CODE ANN. §§ 92A-2301-24 (1971); LA. REV. STAT. ANN. § 40:2331 (Supp. 1972); MISS. CODE ANN. §§ 7106-161 (Supp. 1972); N.C. GEN. STAT. §§ 113A-21-23 (Supp. 1971).

117/ See, Quiet Revolution, supra, n. 89, 262-289.

118/ Lefcoe, 2d ed., supra, n. 25 at 101. See, also, Id., at 108-111.

Bay Conservation and Development Commission Act are examples. 119/

Other concepts already in force or under consideration include critical areas protection, coastal zone development, and shoreline management acts; state-wide comprehensive planning acts; open space management laws; state licensing of all major developments; state regulation of unorganized areas; and state-wide land-use districting. Many states have enacted power-plant siting laws, strip-mining laws, and use-value agricultural preservation tax programs. 120/ Not to be overlooked are area-wide planning agencies ranging in size from the 13-state area involved in the Appalachian Regional Development Act of 1965, 121/ to the bi-county Maryland-National Capital Park and Planning Commission. 122/

Topics mentioned in this section are examples of an emerging, very complex, fragmented, and multi-purpose-oriented land use management and control process. Real estate investors, however diligent, will have difficulty keeping abreast of developments. The institutions and mechanisms often overlap, often conflict, and often leave gaps in what may prove to be essential coverages.

Alien investors who do not carefully evaluate the possible effect of such evolving processes as they analyze potential real estate markets may find that they have paid premium prices for opportunities in yesterday's market, and have missed opportunities in tomorrow's market.

Significant Aspects of the Judicial Process

As legislatures across the country enact new land-use control laws, challenges to constitutionality, authority, and specific application inevitably follow. Some recent municipal efforts to limit or slow-down development have been blocked, or delayed in application, through litigation; others have so far been upheld. Widely debated recent decisions have left a considerable degree of uncertainty over what municipal government can do to limit growth. In some instances, such as the Horne case 123/ in Fairfax County, Virginia, and the Petaluma case 124/ in Sonoma County, California, local growth control ordinances have been overturned by

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119/ See, Quiet Revolution, supra, n. 89, at 108-135.

120/ See, generally, Miner, Agricultural Lands Preservation, A Growing Trend in Open Space Planning, 3, ULI, supra, n. 86, at 52-60; Land Use, supra, n. 86, at 64-68.

121/ 40 U.S.C.A. §§1-405 (1969).

122/ MD. CODE ANN., Art. 66D (1975 Cum. Supp.).

123/ Horne v. Board of Supervisors of Fairfax County, 216 Va. 113, 215 S.E. 2d. 453 (1975).

124/ Construction Industry Assoc. v. City of Petaluma, 375 F. Supp. 574 (N.D. Cal. 1974), Rev. on Appeal, Construction Industry Assoc. of Sonoma County v. City of Petaluma, 522 F.2d 897, Rehearing and Rehearing En Banc Den. (9th Cir. 1975), (Cert. den., 44 U.S.L.W. 3467 Feb. 23, 1976.)

courts. In New York the Ramapo 125/ and Belle Terre 126/ decisions upheld similarly-intended legislation. The specific facts and the issues have been sufficiently different that no clear-cut pattern has emerged. Related issues, such as whether "sewer moratoria" ordinances effect a "constitutional taking," have not been settled.

Environmentalists in California successfully blocked construction, after a building permit had been issued, successfully arguing that the issuing authority was obliged to prepare an environmental impact report as a prerequisite to issuing the construction permit. 127/ In Boulder, Colorado, the court disallowed a refusal of the city to extend utility services to a plaintiff-developer whose project lay beyond the city limits. The court held that the city's growth plan, on which the refusal was based, was too vague and indefinite, notwithstanding the fact that the plan was supported by a public resolution favoring growth control. 128/ Douglas County, Nevada, was enjoined from issuing building permits until sewage treatment facilities were built to serve the Lake Tahoe Basin. 129/ In New Jersey, an interim zoning ordinance was upheld which prohibited (except for special permit situations) all new development in a flood-prone area. 130/ Another interim ordinance by the Hackensack Meadowlands Development Commission, which put a freeze on construction in 10,000 acres of the development area, was also upheld by the New Jersey Court. 131/ In a recent California Case, Ogo Associates v. City of Torrence, 132/ a zoning change enacted during a construction moratorium disqualified the plaintiff's intended use of his land for a federally subsidized housing project. Prior to the interim moratorium, this would have been a permitted use.

125/ Golden v. Planning Board of the Town of Ramapo, 30 N.Y. 2d 359, 334 NYS 2d 138, 285 N.E. 2d, 291 App. dism. 409 U.S. 1003, 93 S. Ct. 436, 34 L. Ed. 394 (1972).

126/ Village of Belle Terre v. Borass, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974).

127/ Friends of Mammoth v. Board of Supervisors of Mono County, supra, n. 76.

128/ Robinson v. City of Boulder [Colorado], Dist. Ct. Action No. 72-2033-1 (1974), discussed, 2 MANAGEMENT AND CONTROL OF GROWTH, THE URBAN LAND INSTITUTE (R. Scott, ed.) ch. 10, p. 237 (1975).

129/ United States v. Douglas County, 5 E.R.C. 1577 (D. Nev. 1973); Cf., People ex rel. Younger v. County of El Dorado, supra, n. 113.

130/ Cappture Realty Corp. v. Board of Adjustment of Borough of Elmwood Park, 126 N.J. Super. 200, 313A 2d 624 (1973).

131/ Meadowland Regional Development Agency v. Hackensack Meadowlands Development Commission, 119 N.J. Super. 572, 293 A. 2d. 192 (1972), cert. den. 62 N.J. 72, 299 A. 2d 69 (1972).

132/ 37 Cal. App. 3d 830, 112 Cal. Rptr. 761 (1974).

Class-action suits 133/ make possible legal challenges which would be economically impossible for low- and moderate income individual plaintiffs. This type of action has been particularly attractive where due process and equal protection issues could be raised. A rash of such actions has been seen recently in the environmental arena. However, the situations justifying class-action suits are not clearly defined, and recent decisions appear to have recognized some unanticipated limitations. 134/

The status of other land-use regulatory measures has also been disturbed by recent court decisions. New York's rent-control law, for example, has recently been ruled unconstitutional. 135/

Multi-faceted policy issues, with strong and innovative advocates supporting each position, are involved in these and similar judicial contests. Underlying these contests is the question of the degree to which the status of land, as a freely-marketable commodity, will be subordinated, under public trust concepts, to use limitations designed to achieve emerging social goals.

The alien investor who does not understand our multi-jurisdictional legislative and judicial system or our common-law heritage may tend to rely too heavily on a single encouraging decision. He may not realize how closely a decision may be limited to its particular facts, or how little effect it may have on decisions in a different jurisdiction. And he may not understand that where policy-related statutory interpretations have been decided by a bare majority of the court, a dissenting opinion may later become the majority decision in a similar case which follows a change in the membership of the particular bench.

Public Safety Programs Affecting Urban Land

In emergency situations, the police powers of government, exercised for the public safety and general welfare, permit the complete destruction of private property without notice, with minimal due process, and without any obligation to compensate. Situations warranting this level of action are uncommon, but they have occurred often enough for the principle to have been tested in the courts and found to be sound and substantial. An often cited example is the right to raze property in an urban area to create a fire break where a major fire is raging out of control. Developing technology may raise some new applications which might be tested. For example, if the capacity to dependably predict major earthquakes does reach its expected potential, local communities identified as "targets" may require that major protective renovations be taken with respect to buildings imposing threats to the public safety.

133/ See, generally, 3B, J. MOORE, FEDERAL PRACTICE, §§23.02[1]-23.05.

134/ See, e.g., Zahn v. International Paper Co., 414 U.S. 291, 94 S. Ct. 505, 38 L. Ed. 2d. 511 (1973).

135/ Housing and Development Administration of City of N.Y. v. Community Housing Improvement Program, Inc., 374 N.Y.S. 2d. 520 (1976).

On occasion, the only adequate solution may be to order the razing of certain buildings. Where ordered renovations are not performed, local authorities, under appropriate ordinances, could raze the affected buildings and impose a lien on the underlying land, in order to recover, through foreclosure and public sale, the public funds expended.

Such risks and all others relating to sovereign powers, including the potential for crippling levels of taxation, hover over citizens and aliens in equal degree. The alien investor may be less familiar with them and thus may not incorporate them into his evaluation process in reaching investment decisions. An urban sector probably presents a broader spectrum of such risks than do most rural sectors.

Federal Level Programs and Controls

Public Financing Programs (Direct and Indirect) Influencing Real Estate Investments

Since World War II, various federal support and subsidy programs have been established in an effort to provide adequate housing for all citizens. F.H.A., V.A., and F.H.L.M.C. programs protecting institutional lenders have become basic market components that are enhanced by private mortgage insurance firms. Rental and owner subsidy programs were terminated in January 1973. Housing remains a major national concern, however. Further federal assistance, such as that provided under the Community Development Act of 1974 may provide new incentives for alien investors considering urban real estate involvement.

The section 701 planning grant program 136/ has been of major importance in improving the environment for dependable investments in urban real estate, and its progeny should continue to do so. The secondary finance

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136/ The Urban Planning Assistance Program authorized by the Housing Act of 1954, §§ 701-03, 40 U.S.C. §§ 460-62 (1964), as amended, 40 U.S.C. §§ 460-62 (1970). The Community Development Block Grant Program of the Housing and Urban Development Act of 1974, P.L. 93-383, 42 U.S.C. § 5301 et. seq., significantly revamps the "701" program, though its real effect is still speculative. See, generally, H. Coleman and M. Blumm: Curbing Federal Urban Sprawl: A Study of the Need to Coordinate CZM, 701, and 208 Planning in the Coastal Zone; unpublished term paper for Law 504, May 5, 1976, on file, National Law Center, The George Washington University.

market, 137/ under FNMA 138/, GNMA 139/, and FHLMC 140/, has been an essential component of the financing process for new development and construction, particularly in the urban sectors. Through these programs and with the active participation of mortgage bankers, contract-thrift institutions such as life insurance companies and pension fund management entities have been able to make major, secure investments in real estate. Programs such as that recently sponsored by the F.H.L.M.C. 141/, to establish a commodity-type market in mortgage futures, hold promise of becoming major components in the secondary market for real estate investments because of the high degree of liquidity provided.

The secondary market provides opportunities for well-secured, low-risk, dependable-return investments which carry low overhead costs and require minimal on-location management responsibilities. This market may be particularly attractive to those alien investors who have large blocks of funds becoming available on a continuing basis. This secondary market, being of a portfolio nature rather than a direct investment, is technically outside of the scope of this particular study. It is not completely separable, however, because it is a major component of the process through which direct real estate investments are funded. The U.S. real estate market is so large, and its capacity to assimilate investment funds within its low-risk segments is so great that there would seem to be little basis for official worry over substantial alien participation in its secondary financing sectors. Concern might more soundly be directed towards the costs of failing to attract enough alien investor participation therein.

Tax-policy decisions also may influence the channels into which investment funds flow. For example, the attractiveness of resort condominiums has been somewhat diminished by the application of Internal Revenue Code §167(j)(2) which allows the most rapid depreciation deduction rate (200% declining balance) only for the first user of residential rental

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137/ See, for concise description, Federal National Mortgage Association, Background and History, 1938. . .1969 (1969) at 12, 13. See, generally, R. Pease & L. Kerwood, Mortgage Banking (2d ed. 1965).

138/ See, N. Penney and R. Broude, Land Financing, Cases and Materials (1970) [Hereinafter cited as Land Financing], at 369-376. See (for summary of changes effected by the Housing and Urban Development Act of 1968), G. Nelson and D. Whitman, REAL ESTATE FINANCE AND DEVELOPMENT, Cases and Materials, 483-84 (1976). [Hereinafter cited as Real Estate Finance].

139/ See, Real Estate Finance, supra, n. 138, at 484-86.

140/ Id., at 486-87.

141/ See, generally, R. Gray, The Feasibility of Organized Futures Trading in Residential Mortgages, FHLMC Monographs: No. 3, Federal Home Loan Mortgage Corp., Nov., 1974; Mary A. Fruscello, The Economic Function and Development of the GNMA Mortgage Futures Market (Dec. 1975), unpublished paper on file, The National Law Center, The George Washington University.

property. This advantage may thus be lost if the alien investor is not the first owner or the first user (e.g., where a developer rented the unit for a time before it was sold), or where it was used for a transient rather than a permanent residence. 142/

Consumer Protective Processes

Where regulations promulgated under the aforementioned Interstate Land Sales Full Disclosure Act of 1969 143/ have not been followed, sales may be legally avoided; for some violations, the Office of Interstate Land Sales of HUD may forbid any further offerings. 144/ Because these regulations and their state-level counterparts are of an in rem nature, they are equally binding on alien and domestic developers.

Recently surfaced is the federal-level question: Is a condominium or cooperative offering a security, and thus subject to SEC regulations? The Securities and Exchange Commission, in May 1972, appointed a Real Estate Advisory Committee to review this question and recommend policy objectives. Prior to the Committee's Report in late 1972, 145/ the Commission cautioned that condominium offerings might fall within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934, 146/ and thus be subject to registration requirements. On April 9, 1973, the SEC "warned developers that the dissemination of any sales literature or publicity concerning a condominium project classified as a security, if done prior to the effective date of a registration statement would be illegal. . . ." 147/

142/ See, IRC § 167(g)(2) (re: "first user"); Income Tax Reg. § 1.167 (k)-3(c) (Defining a "transient unit"). See, generally, Milton, The Resort Condominium-A Treacherous Tax Shelter, 2 J. Real Est. Tax 200 (1975), and Adams, Tax Shelter in Real Estate Investments, 1 Utah B.J. 13 (July-Sept. 1973).

143/ See, text, supra, at n. 79.

144/ See, list of most common violations, with remedies provided, including criminal sanctions, in Ingersoll and Block, supra, n. 79, at 4.

145/ Report of the Real Estate Advisory Committee of the Securities and Exchange Commission, Oct. 12, 1972. See, generally, Dickey & Thorpe, Federal Security Regulation of Condominium Offerings, 19 N.Y.L. Forum, 473 (1974).

146/ Securities Act Release No. 33-5347, Jan. 4, 1972, ". . .[C]ondominiums, coupled with a rental arrangement, will be deemed to be securities if they are offered and sold through advertising, sales literature, promotional schemes or oral representations which emphasize the economic benefits to the purchaser to be derived from the management efforts of the promoter, or a third party designated or arranged for by the promoter, in renting the units. . . ." Id. See, generally, Ellsworth, Condominiums Are Securities, 2 Real Estate L.J. 694 (1974), Cf., Long, Partnership, Limited Partnership, and Joint Venture Interests as Securities, 37 Mo. L. Rev. 781 (1972).

147/ Securities Act Release No. 33-5382, April 9, 1973.

The "time-sharing" concept of concurrent ownership in condominium units was the subject of a January 30, 1973 letter of inquiry to SEC, from Innesfree Corp., with respect to an Hawaiian project. 148/ On May 7, 1973, the Innesfree letter was made public, along with the SEC Staff Reply which closed with the statement:

> On the basis of the facts presented, this Division will not recommend any action to the Commission if the interests discussed above are offered and sold without registration under the Securities Act of 1933, in reliance upon your opinion as counsel that registration is not required. 149/

However, in a subsequent letter, the SEC states that it will no longer issue no-action letters for time-sharing condominiums, and that other time-sharing developers should not rely upon the original Innesfree no-action letter. 150/ Consequently, in entering these market areas, aliens should be very cautious about SEC implications.

Cooperatives are also vulnerable to similar SEC regulations. But for both condominium and cooperative developers, SEC Rule 146, 151/ sets forth one of several exemptions to registration requirements which may be of value to alien investors. This ruling permits sale, under a private offering, of up to 33 units, to investors who are either sophisticated in their own right or who are adequately represented and are able to carry the risk which the investment entails. It also specifies what information must be made available to prospective purchasers, and sets out some limitations on marketing methods that may be used.

Alien investors who are attracted to commercial shopping centers may need expert counseling on trade regulations when drafting leasehold clauses designed to give "exclusives" to various tenants, or to give privileged tenants a substantial voice in the selection of tenants for other units in the development. The case of Dalmo Sales Co. v. Tysons Corner Regional Shopping Center, 152/ illustrates trade regulation problems of this nature which may lead to litigation. The issues there dealt with are neither unique nor settled.

For example, the Federal Trade Commission, in a related matter, issued

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148/ SEC No-Action Letter, The Innisfree Corp., Public Availability Date May 7, 1973. See, generally, Liebman, Can Condominium Time-Sharing Work? 3 Real Est. Rev. 40 (1973).

149/ Id. (No-Action Letter, The Innisfree Corp.).

150/ SEC Letter, Public Availability Date June 19, 1974.

151/ SEC Rule 146, SEC Release No. 33-5430, effective June 10, 1974. See, also, SEC Rule 147, SEC Release No. 33-5450, effective Mar. 1, 1974 (re: intrastate offering exemptions).

152/ 429 F.2d 206 (D.C. Cir. 1970).

a complaint against Gimbel Brothers, Inc. 153/ charging violation of Section 5 of the Federal Trade Commission Act for reserving in its shopping center leases too much lessee power and control over other tenants. 154/ In the same year, the court in Plum Tree, Inc. v. N. K. Winston Corp., 155/ though holding that a practice of leasing to various tenants at differing rents did not violate the Robinson-Patman Act, offered by way of dictum, that the plaintiff might be able to show the necessary interstate character of the transactions to bring the complaint within the Sherman Act. 156/

In this problem area, as with so many others mentioned in this section, the alien status of an investor is not significant per se, nor is the problem area confined to urban sectors.

Constitutional Protection Considerations

F. Morrison and K. Krause have provided an excellent and current study 157/ on federal and state regulation of alien and corporate land ownership. Though focused on agricultural lands, the study is generally applicable to urban area investments as well. Of significance to this section is their observation regarding sovereign immunity; that property owned by a foreign state is presumed to be immune from local taxation, local regulation, or local court jurisdiction only with respect to its governmental and diplomatic activities, but not with respect to its commercial, business, or investment activities. 158/ They suggest, however, that this presumption is not conclusive, and pose the question whether some legislative clarification is desirable. 159/ In light of indications that some nations have made entreprenurial investments out of their national treasury, this point should soon be explored. Failure to fully understand some of the ramifications of our complex regulatory processes could lead to international misunderstandings which could be compounded by unsettled questions of jurisdictional immunity.

153/ Complaint issued May 8, 1972, F.T.C. Docket No. 8885; see, generally, Note, The Antitrust Implications of Restrictive Covenants in Shopping Center Leases, 86 Harv. L. Rev. 120 (1973).

154/ In the Matter of Gimbel Brothers, Inc., a corporation: FTC Docket No. 8885 (Agreement Containing Consent Order to Cease and Desist), May 24, 1973. A similar order was entered into with the well-known shopping center developer, The Rouse Co., on Jan. 30, 1975. See, No. 699, BNA Antitrust & Trade Reg. Rpt. at A-10 (Feb. 4, 1975).

155/ 351 F. Supp. 80 (N.D.N.Y. 1972).

156/ See, generally, Note, Sherman Act Challenges to Shopping Center Leases: Restrictive Covenants as Restraints of Trade Under Section 1, 7 Ga. L. Rev. 311 (1973).

157/ Morrison/Krause, supra, n. 8., Interim Report, supra, n. 8.

158/ Morrison/Krause, supra, n. 8, at 7-8; Interim Report, supra, n. 8, at XI-2, 3.

159/ Id.

Implicit in the Morrison-Krause paper is the question of whether the economic interests of the United States may necessitate federal assumption of more control over alien direct investments than it has done heretofore. 160/

Morrison-Krause also raise the question of whether non-resident aliens are entitled to the constitutional protections afforded citizens and resident aliens. 161/ They indicate there is some uncertainty with respect to the jurisdictional powers of our courts over non-resident aliens, where real property matters are at issue. 162/ To avoid misunderstandings that could appear discriminatory and to protect the interests of, for example, our lending institutions where alien non-residents may be considered in a mortgagor status, all possible jurisdictional uncertainties should be eliminated. Security interests attach to the land, which is always within the jurisdictional reach of the host state. That being so, matters of due process notice in foreclosure proceedings, though technically adhered to through publication provisions, might raise assumptions on the part of non-resident aliens that they had been subjected to expropriation measures. On the other hand, the fact that the "in rem" jurisdictional base allows standing before the courts to anyone who has the right to legally acquire interests in land, without any further regard to alien status, should bolster an attitude that principles of fair play prevail.

Summary and Assessment

In a broad technical sense, there is nothing of significance with respect to alien direct investors in real estate that is unique to urban areas except for the obvious facts of size, density and diversity of urban potentials. If any one word can describe what is unique about the urban sector, it is probably the word "more." There are more opportunities; more types of opportunities; more controls; more complexity; more institutions, interacting more closely; more sophistication; more potential consumers; more available funds; more confusion; more actual and potential confrontations; more applicable rules and regulations; more risks. There is more competition for space. There are more people with more conflicting interests and more opportunities and capabilities for giving effective voice to conflicting goals and aspirations. From this aspect, the urban sector is unique, but not necessarily more so for alien than for domestic investors.

The major dissuasion that the urban sector imposes on the alien investor is the tremendous complexity of the management processes within whose bounds the urban real estate market functions. The number of control elements which have to be kept in mind and evaluated; the number

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160/ Morrison/Krause, supra, n. 8, at 59-61; Interim Report, supra, n. 8, at XI-43.

161/ Morrison/Krause, supra, n. 8, at 24; Interim Report, supra, n. 8, at XI-28-36.

162/ Id.

of institutions that may have jurisdictional responsibility; the different levels of government that may be involved; the number of overlaps in responsibility; the operational peculiarities of institutions; all these combine to create a hazardous investment environment.

If policy-makers conclude that it is in our national interest to encourage alien investor participation, they they should attempt to minimize market harassments, impediments, and frustrations. If, on the other hand, they find it preferable that aliens focus their attention elsewhere, such a result can probably be accomplished simply by allowing the current trend towards proliferating controls over real estate investment to continue.

The interest displayed by aliens in stable, long-term, secure real estate investments which require minimal local managerial responsibility, coincides with a voracious and continuing demand within the urban sector for development funds to satisfy construction needs. A careful evaluation of the potentials for attracting alien investments into the urban real estate development market, and of the desirability of doing so, might be one of the most productive and responsible efforts we could undertake.

In any such evaluation, the matter of accurate data is a major consideration. But careful thought should be given to how a demand for needed alien investor information can be built into the existing land records system without forcing similar but objectionable disclosures upon domestic investors. Privacy has attractions that will, if removed, discourage participation. The wise decision-maker will note that the ingenuity of common-law conveyancing attorneys has been demonstrated many times with respect to hiding the identity of real parties in interest where such a desire has been substantial. There is no reason to presume that their ingenuity has diminished. It would therefore seem worthwhile to carefully determine what information is essential to our decision-makers, to clarify the reasons therefor, and to attempt to design a process that will produce such information in a manner least damaging and dissuasive to those who will be subject to the process. In so doing, we should not overlook some of the more broad-spectrum types of information we may need about land use. 163/

163/ See, generally, Land Parcel Identifications for Information Systems (D. Moyer and K. Fisher, eds.), Am. Bar Found. (1973); J. Brown, Metrication With Respect to Land Applications (Supporting Paper, NSF-RANN Metric Conversion Study, Univ. of Minn.) (1974).

LEGAL STRUCTURES AFFECTING INTERNATIONAL REAL ESTATE TRANSACTIONS

Joshua M. Morse, III*

Introduction

Land as a unique, non-renewable, and immovable resource receives special treatment as to ownership, possession, use, and alienation by nations throughout the world. Land produces the basic commodities, minerals, and food which form the basis for all production and wealth. Except for that produced from the ocean, land produces all food, the most pressing need of all goods and services for the majority of the world's peoples.

All nations regulate the use and ownership of land because of this. Internationally, treaties, bilateral and multilateral, and customary law further regulate land ownership and use.

This article examines this regulation in two steps. In the first, international treaties and customary law form the base for examination to see how they limit the effective use of different methods of regulating the ownership of land by aliens. The boundaries drawn by treaties affect both state and national regulation by the force of those treaties granting national treatment to aliens interacting with treaties granting most favored nation treatment.

Secondly, the regulation of land in foreign countries by national statutes is examined to see what is exemplary and transferable to the United States. Obstacles to use of foreign methods as well as developed modes of avoidance of foreign regulation form the balance of this examination.

The paper concludes with alternative routes of action suggested.

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International Law

Introduction

A brief examination of international law in general is required before the effects of international law on international transactions involving real estate in the United States can be ascertained. There are three primary sources of international law: 1) cusotmary international law, 2) multilateral treaties 1/ and 3) bilateral treaties. The principal tribunal for litigation based on a violation of international law is the International Court of Justice (World Court). The World Court only hears disputes between nations; 2/ however, if a private party who has been injured by foreign governmental action in violation of international law can get his own government to take up his case against the foreign government, this jurisdictional requirement is fulfilled. 3/ Jurisdiction of the World Court also depends on the respondent nation's consent. 4/ This consent may be obtained on a case by case basis, through a treaty provision, or by a unilateral declaration. The United States has recognized, with reservation, the compulsory jurisdiction of the World Court for any international dispute with a nation which has also accepted the Court's compulsory jurisdiction. 5/ The United States' reservation rescinds this recognition if, in the opinion of the United States, the dispute concerns matters "essentially within the domestic jurisdiction of the United States." 6/ Just what matters fall within the category "domestic jurisdiction" is unclear.

In addition to being enforceable in the World Court, a claim involving a violation of a United States treaty may also be brought in a United States federal court. 7/ Treaties interpreted in United States courts are given a broad and liberal construction as to the rights they impart. 8/ Where a state statute or constitutional provision conflicts with a treaty, the treaty prevails. 9/ This is so even if a treaty has been violated by another party; the court will not presume an abrogation of the United States' obligations under a treaty absent a declaration to that effect by the President or Congress. 10/ Although a treaty supersedes any prior federal statute, 11/ a treaty may be modified or repealed by subsequent acts of Congress, 12/ despite the fact that such action might be a violation

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1/ The term treaty is used in the general sense in this chapter, signifying any international agreement; as opposed to its technical meaning as used in the Constitution.

2/ I.C.J. Stat. art. 34 ¶1.

3/ Mavromatis Palestine Concessions Case, [1924] P.C.I.J., ser. A, No. 2.

4/ I.C.J. Stat. art. 36 ¶1.

5/ [1971-1972] I.C.J.Y.B. 84.

6/ Id.

7/ U.S. Const. art. III, §2.

8/ Asakura v. City of Seattle, 265 U.S. 332 (1924).

9/ Kolovrat v. Oregon, 366 U.S. 187 (1961).

10/ Charlton v. Kelly, 229 U. S. 447 (1913).

11/ Cook v. United States, 288 U.S. 102 (1938).

12/ Edye v. Robertson (Head Money Cases) 112 U.S. 580 (1884); Reid v. Covert 354 U.S. 1 (1957).

of international law potentially subjecting the United States to liability for damages.

Customary International Law

Customary international law consists of principles which are accepted as law as a result of: 1) a general practice over time by several nations in accordance with those principles; 2) "a conception that the practice is . . . consistent with international law [and 3) a general acquiescence in that practice by other [nations]." 13/ Customary international law is of little significance to our inquiry. First, because it is very unlikely that any official governmental act in the United States would be inconsistent with customary statement of the established practice of the majority of the world's governments. Also, because of the vast differences in nations' policies relating to the acquisition and ownership of land by aliens, there is no body of customary international law dealing with the subject. Thus, it is clear that there is no requirement that a nation allow aliens to acquire real estate. 14/ If an alien lawfully owns land, however, customary international law protects the property from expropriation without procedural safeguards and just compensation. 15/ This provision is of doubtful significance to an alien investor in the United States because almost identical protection is provided by the fifth amendment's prohibition against taking without just compensation, which the Supreme Court has held applicable to aliens. Additionally, many bilateral commercial treaties also incorporate the same guarantee.

Other than in the case of uncompensated takings of land owned by aliens, the only time customary international law would bear on the issue of aliens' real property rights in the United States would be in situations involving lands under the seas. By customary international laws, the territority over which coastal nations have sovereignty has been extended beyond their coast-lines, out into the oceans. The concept of a territorial sea 16/ evolved during the 16th century, 17/ and the three-mile limit was established as customary international law by the mid-1920's. 18/ But a maritime nations' sovereignty does not stop at the three-mile limit. In 1969 the World Court recognized as customary international law the sovereign right of coastal states to the continental shelf contiguous to their coasts 19/ "for the

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13/ H. Steiner & D. Vagts, Transnational Legal Problems 190 (1968).

14/ A. Roth, The Minimum Standard of International Law Applied to Aliens 185-86 (1949).

15/ Id.

16/ The territorial sea is an extension of a nation's sovereingty to the seas adjacent to its coast. S. Swarztrauber, The Three-Mile Limit of Territorial Seas 3 (1972).

17/ Id. at 24.

18/ Id. at 151.

19/ The area referred to as the continental shelf by the World Court, see Note 27 and accompanying text infra, does not necessarily coincide with the geological concept of the coastal plain and the much steeper continental slope. 5 Encyclopedia Britannica Macropaedia 115 (15th ed. 1974).

purpose of exploring the seabed and exploiting its natural resources." 20/ The United States had claimed this right in the 1945 Truman Proclamation on the natural resources of the subsoil and seabed of the continental shelf. 21/

Since 1953, title to lands and natural resources beneath the waters within the three-mile limit of the United States has been vested in the coastal states subject to certain rights ascertained by the federal government. 22/ That portion of the continental shelf lying seward of the three-mile limit is termed the "outer continental shelf" 23/ and is subject to the exclusive authority of the federal government. 24/ Mineral leasing and scientific exploration of the outer continental shelf was authorized in 1953 by the Outer Continental Shelf Lands Act. 25/ Thus, alien individuals or companies wishing to engage in the exploration or development of the mineral resources of the continental shelf off the United States must obtain authorization from either the adjacent state(s) (if the area of interest is within the three-mile limit) or from the federal government (if the outer continental shelf is involved).

Multilateral Treaties

Multilateral treaties to which the United States is a party are typically concerned with a particular commodity, activity, or problem which requires international cooperative action. The only multilateral treaties (other than for diplomatic, consular, or defense purposes) were the result of the United Nations' 1958 Geneva Conference on the Law of the Sea. The Convention on the Territorial Sea and Contiguous Zone merely codified for the 44 signatory nations what was already customary international law -- that is, that the sovereignty of a coastal nation extends to its territorial sea, including the air space, seabed, and subsoil. 26/ The Convention on the Continental Shelf defined the continental shelf as "the submarine areas . . . to a depth of 200 metres or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas." 27/ Given a broad construction, this definition of the continental shelf could vest in a coastal nation the rights to the natural resources of the continental slope up to the edge of the oceanic abyss. This would result in an extension of the United States' sovereignty in most places from approximately 55 to 105 miles offshore. 28/

20/ North Sea Continental Shelf Cases, [1969] I.C.J. 3, 22.
21/ Proc. No. 2667, 3 C.F.R. 67-68 (1943-1948 Comp.).
22/ Submerged Lands Act, 43 U.S.C. §§1301-15 (1970).
23/ Outer Continental Shelf Lands Act, 43 U.S.C. §1331 (1970).
24/ Id. at §1332.
25/ 43 U.S.C. §§1331-43 (1970).
26/ Convention on the Territorial Sea and Contiguous Zone, April 29, 1958, art. 2, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205.
27/ Convention on the Continental Shelf, April 29, 1958, art. 1, 15 U.S.T. 471, T.I.A.S. 5578, 499 U.N.T.S. 311 (emphasis added).
28/ 5 Encyclopedia Britannica Macropaedia 115 (15th ed. 1974).

Bilateral Treaties

Unlike customary international law and multilateral treaties, international law derived from bilateral treaties to which the United States is a party could directly and significantly affect international transactions involving real estate in the United States, depending on the nationalities of the parties involved. The friendship, commerce, and navigation treaties, 29/ a common type of bilateral agreement, generally contain provisions which grant nationals or companies of the other signatory country specific rights relating to land owhership and use in the United States. The treaties, rather than granting rights outright, generally guarantee a minimum level of treatment concerning the specific right involved. The two principal standards used are national treatment and most-favored nation treatment. If a treaty guarantees national treatment, it is an assurance that the federal government will not discriminate, as to that particular right, between the nationals of the other party and citizens of the United States, and that the states will not treat them any differently than they treat citizens of other states. A guarantee of most-favored nation treatment assures aliens of that nationality of equality of treatment as compared with the treatment afforded nationals of any other foreign country. Often, in effect, it makes no difference which standard is used: If a treaty with one country grants national treatment with respect to a particular right and a treaty with another country grants most-favored nation treatment regarding the same right, nationals of both coutries would be guaranteed the same treatment.

Most of the friendship, commerce, and navigation treaties have provisions which modify or supersede many state laws dealing with alien land ownership. The most common type of provision is one which modifies those state laws which restrice inheritance and/or ownership of land by aliens; these treaty provisions give the aliens a reasonable amount of time (usually three to five years) in which to dispose of the land which they would have inherited it it were not for their alienage. 30/ Another common provision grants aliens national treatment in the acquisition of land by inheritance, 31/ and several other treaties guarantee most-favored nation treatment with respect to the acquisition and possession of land, 32/ thus accomplishing the same result. These provisions, contrary to the view expressed by a renowned authority in this area, 33/ appear to entirely supersede all state laws which place restrictions on land inheritance by aliens. Although, if the state, in addition to restricting inheritance, also prohibits land ownership by aliens, 34/ the inherited land would have to be disposed of

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29/ There were 43 such treaties in force as of January 1, 1975. Department of State, Treaties in Force, (1975).

30/ See Table 1, Treaty provisions modifying or superseding state restrictions on alien land ownership, infra.

31/ Id.

32/ Id.

33/ Morrison, "Legal Regulation of Alien Land Ownership in the United States," in 2 U.S. Department of Commerce, Interim Report to Congress: Foreign Direct Investment in the United States XI-37 (October, 1975).

34/ The states which prohibit alien land ownership as well as restricting inheritance are: Connecticut, Iowa, Kentucky, Nebraska, Oklahoma, and Wisconsin.

within the time period set by the treaty. The state laws which are superseded by treaty provisions granting inheritance rights include those based on reciprocity 35/ and the "iron curtain acts" which restrict inheritance based upon the probate court's determination that the alien beneficiary would not have the use, benefit, or control of the land. 36/ Even without a treaty governing the rights of succession, these statutes are arguably void. If, when applying the statutes, the state courts become involved in an analysis of the political system of a foreign nation, the statutes as applied are an unconstitutional encroachment by the state into the federal domain of foreign affairs. 37/

An important set of treaty provisions which supplant state alien land laws allows aliens to own or lease land for specified purposes. 38/ The allowable uses are generally all residential, industrial and commercial purposes with the exception of mining and agriculture. Nationals of those countries that have been granted most-favored nation treatment as to the acquisition and possession of land 39/ are also entitled to own or lease land for the purposes allowed. As a result of those provisions, state laws prohibiting ownership of land by aliens can be effective as to all aliens only as to agricultural and mining lands. A state's prohibition on alien land ownership will not be totally effective even as to agricultural land, however, if the statute exempts from its terms any national group 40/ because the exemption, by operation of treaty, is extended to those aliens having most-favored nation status regarding land acquisition and possession. 41/

Finally, several countries have most-favored nation status as to the exploitation of mineral resources. 42/ These treaties are particularly significant to Oregon and Alaska because they restrict alien acquisition of mining rights in state lands. If, in the future, a treaty grants a foreign country national treatment regarding this activity (a distinct possibility with the emphasis that has been put on the exploitation of the petroleum reserves of the continental shelf), Oregon's and Alaska's restrictions will be superseded.

It is apparent from the above that, by modifying or superseding state and federal statutes, international law, mainly in the form of bilateral treaties, can play a significant role in delineating the rights of alien

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35/ The states with inheritance laws based on reciprocity are: California, Iowa, Montana, Nebraska and Wyoming.

36/ Connecticut, Massachusetts, New Jersey, New York and Wisconsin have this type of inheritance law.

37/ See Zschernig v. Miller, 389 U.S. 429 (1968).

38/ See Table 1, supra Note 30.

39/ Id.

40/ Connecticut and Mississippi fall into this category. Connecticut exempts French aliens and Mississippi exempts Syrians and Lebanese.

41/ See Table 1, supra Note 30.

42/ Id.

parties to land transactions in the United States. Therefore, federal or state lawmakers, attempting to codify governmental policy regarding the property rights of aliens, should take into account the possible impact that international law would have on the legislation under consideration. Any attempt on the federal level to restrict acquisition of land by aliens or to prohibit alien ownership of land (other than agricultural or mining land) would be a clear violation of those treaties specifically allowing acquisition or ownership. 43/ In addition to the liability for damages, further repercussions could reasonably be expected to follow from treaty violations of this nature. For example, the foreign governments affected could invoke reciprocity, which could presumably harm commercial interests of American companies in those countries. Another likely reaction would be a retaliation in other areas governed by treaties, such as defense.

These unpleasant results can be avoided by leaving the task of restricting land ownership to the states, as is currently done. However, as previously discussed, state laws must bow to the supremacy of treaty law, and as a result, the state laws have been riddled with exceptions by the series of friendship, commerce, and navigation treaties. A similar fate most likely awaits any future state restrictions. But, since there are no treaties that grant national treatment regarding the possession of land at present, a restriction on land ownership in the form of a registration requirement could be passed either by the states or by Congress with confidence that it would not be superseded by a previous treaty and without fear of a treaty violation.

National Legal Structures
An Overview

While all national legal systems give special treatment to the acquisition, possession, and disposition of real property, not all countries treat the regulation of alien investment in land in the same manner. 44/ Policies in this area of the law are strongly influenced by the economic conditions within a particular nation and the importance of land in its economic structure. In addition, many laws are based on the historical legal conditions and the current political philosophies of each country. There are seven basic approaches which have been followed:

1. No special provisions for alien investors in land.
2. Total prohibition of alien interests in land.
3. Key sector restrictions.
4. Limitation of foreign interests to a certain percentage.
5. Authorization requirements.
6. Case by case review of prospective foreign investment.
7. Registration procedures.

43/ Id.

44/ See Table II, Summary of legal provisions relating to alien land regulation in selected countries, based on 6 Martindale-Hubbell Law Directory 3187 (180 ed. 1976).

Countries may be generally grouped according to their mode of regulation, but often on nation will combine two or more methods.

A group of nations, mainly composed of Western industrialized countries, have no restrictions on alien rights in land and foreign investors and treated the same as citizens. It should be noted, however, that although there are no specific limitations, laws directed at regulating or restricting foreign investment in general influence alien investment in land. A second group, made up of communist and socialist states, prohibits or severely restricts ownership of real property by their own citizens and this position is even more strictly enforced against aliens. But the desire for foreign capital has led some of these nations to permit foreign participation in the use of real property but not foreign ownership or control.

The remaining approaches involve some regulation of alien rights in land short of complete prohibition. In fashioning their laws, most nations consider to some degree the type of alien investor which the statute covers and the particular interests in land that are to be protected. The narrower the scope of the law, the more likely that the restriction can be avoided by an alien simply by changing his classification as an investor or the nature of the interest in land. The broader the scope of the law, the more difficult enforcement becomes and the likelihood that desirable foreign investment will be curtailed is increased.

The types of investors usually considered for statutory scrutiny are natural persons, partnerships, corporations, trusts and joint ventures, although some regulations include any type of organization or association. Some laws look to the formal classification of the investors. For example, as regarding natural persons, citizenship or residency may be the key factors in determining their ability to acquire land. The status of corporations or other judicial entities may be controlled by the country of incorporation or by formal registration requirements. Other laws look beyond formal procedures and try to pinpoint the actual source of power over the legal entities. It appears that this group of regulations is aimed at the restriction of the activities of multinational corporations.

The types of interests in land generally considered are direct ownership, leases, concessions for exploration or exploitation of minerals, permits for use of government lands, and contractual arrangements for the use of land. As in defining the concept of "alien investor," some of these laws look to the formalities of title to real property or official ownership of any interest, while others are focused on actual control.

A method frequently employed which partially regulates alien investment is the "key sector" approach. This limits or excludes aliens' rights in real property in certain economic areas of particular importance to a nation. Key sectors include:

1. land used for a particular purpose, e.g. agriculture or mining;

2. designated sections of a country, e.g. along the borders and coasts; and

3. limitation on amounts of land permitted to any foreign investor.

This approach is particularly popular in Latin America but is also used in some European countries.

The final four methods are often found in programs for regulating all types of foreign investment. Requirements limiting foreign ownership or control to a certain percentage are aimed at alien dominated corporations and may be used to permit foreign capital investment while maintaining domestic dominion over the land. European and Latin American nations, in particular, permit alien investment in real property only if prior authorization is obtained. This authorization procedure is often used to modify more restrictive regulations. The review process gives the state the opportunity to analyze prospective land transactions on a case by case basis in order to determine whether such investment is desirable. Finally, some type of registration device is used in almost all countries. Although the amount of information obtained and enforcement procedures vary, many nations appear to have a strong interest in ensuring registration.

All of the above approaches to regulation of aline investment in land are modified in many nations by certain exceptions. Most countries provide an exception for land inherited by aliens, although some require divestiture within a specified period. In addition, resident aliens are often exempted from restrictions applicable to other foreigners. One small group of nations permits alien investment in land if its citizens receive reciprocal treatment in the alien's home country, and few give express preference to citizens of certain countries for political reasons. Finally, the local laws of the political subdivisions of a state may expand the national laws.

Exemplars

The section will discuss the legal provisions relating to alien land regulation in three countries -- Yugoslavia, Mexico and Canada. These nations have recently reconsidered their policies toward foreign investment and have enacted legislation reflecting their current views as to the necessity of regulation and their perceptions as to the most effective methods to their needs. They present a cross-section of economic and political situations and their solutions demonstrate a broad variety of approaches to the problem of alien land regulation.

Yugoslavia

The simplest and most direct means of preventing alien direct participation in a national economy is by a total prohibition on ownership of any of the natural or productive resources of the country. Real property is one of the central resources to be protected from foreign encroachment.

Prohibition of ownership is the method Yugoslavia has chosen to avoid foreign control through direct alien investment which is still considered ideologically as "capitalist exploitation." 45/ However, the advantages to be derived from the entrance of foreign capital and other assets into the Yugoslav economy have been recognized and the government has established a procedure to encourage alien investment while maintaining domestic control.

Real property, designated as a "good of general interest" by the 1974 Yugoslav Constitution, is entitled to special protection and can only be used in methods specified by statute. 46/ Specifically, only residential property and small plots (ten hectares or less) for use by individual farmers may be privately owned 47/ and all sales of this privately held land are regulated by statute. 48/ This land cannot be sold to aliens, however, it may be leased by them. 49/ While it is permitted for foreigners to inherit privately held land, 50/ they must dispose of it within five years. 51/

All other means of production, including land, are socially owned and self-managed by "associations of working people." 52/ In essence this means that all production is carried on by independent groups of workers, each of which is directed by a Workers' Council. However, title to all means of production, including real property remains vested in the state with the workers' associations guaranteed the right to use, benefit and dispose of it. The right of each association to use of a particular tract of land is established as a matter of public record. 53/

In order to inject alien investment into this system the Constitution provides that "organizations of associated labour may . . . use resources of foreign persons for the conduct of their business with the relationship between the Yugoslav and foreign partner to be established by contract. 54/

45/ Note, "Joint Ventures in Yugoslavia: 1971 Amendments to Foreign Investment Laws," 6 International Law and Politics 271, 275 (1973).

46/ Ustav (Constitution) art. 85, 86 (Yugoslavia, 1974).

47/ Id. art. 83.

48/ Id. art. 10-13.

49/ A. Chloros, Yugoslav Civil Law 204 (1970).

50/ 6 Martindale-Hubbell Law Directory 4029 (180 ed. 1976).

51/ Inheritance of land by aliens has not proven to be a real problem. Dual Yugoslav and foreign citizenship may be maintained without difficulty, so that privately held land is generally inherited only by Yugoslav citizens. Interview with Professor Branimir Jankovic, Director, Center for International Studies, University of Belgrade, in Tallahassee, Florida, January 27, 1976.

52/ Ustav (Constitution) art. 10-13 (Yugoslavia, 1974).

53/ M. Sukijasovic, Joint Business Ventures in Yugoslavia Between Domestic and Foreign Firms, 135 (1973).

54/ Ustav (Constitution) art. 27 (Yugoslavia, 1974). The foreign investment procedure was originally established in 1967 and modified in 1971 by Amendments to the Constitution and statutes in force at that time. Note, "Joint Ventures in Yugoslavia: 1971 Amendments to Investment Laws," 6 International Law and Politics 271, 272 n. 2. M. Sukijusovic, supra note 53 at 9, 36 (1973). The inclusion of the same procedures in the new Constitution indicates that the Yugoslava have been satisfied with their operation.

Certain key sectors have been excluded from foreign participation, 55/ but in areas directly related to land use, including the mineral extraction industry, agriculture, and tourism, alien investment has been encouraged. 56/

The form of foreign investment permitted is the joint venture in which a Yugoslav workers' association joins with a foreign enterprise. 57/ Each partner invest capital or other assets while each "retains its identity as an independent juridical person." 58/ The Yugoslav partner contributes land and other fixed assets to the joint venture while the foreigner adds capital or tangible assets. In effect, the alien merely invests in an enterprise which remains a Yugoslav juridicial person and in which the foreigner may never acquire more than 49% control. 59/ The alien investor retains title to his contributed assets to which the Yugoslav partner acquires the right to use, but this in no way makes him a co-owner of the Yugoslav enterprise in which he has invested. 60 / While the foreign partner may participate in the day to day operations, there is no foreign membership on the Workers' Council which makes all final decisions concerning the joint venture. 61/ Due to the extent of Yugoslav control over its real property it has been concluded that there is no sufficient rationale to justify a consideration of real estate problems by a potential foreign investor. 62/ However, it should be remembered that Yugoslavia wishes to encourage foreign investment and to this end the state has modified its laws to conform to the requirements of some alien investors. 63/ Therefore, to the extent that Yugoslavia must meet the desires of foreigners in order to preserve a certain level of investment it has given up some of its sovereignty over its land.

55/ The areas excluded from foreign investment are banking, insurance, inland transportation, commerce, public utilities, and social services. Although it has never done so, the Federal Executive Council may permit alien investment in these fields if it determines such investment is needed. M. Sukisosovic, supra note 53 at 130.

56/ Id.

57/ This differs from most other socialist or communist states where the government totally controls foreign investment through state monopolies or state agencies. Peslj, "Yugoslavia's Economy Looks to the West," 2 Law and Policy in International Business 47, 63 (1974).

58/ Note, "Joint Ventures in Yugoslavia: 1971 Amendments to Foreign Investment Laws," 6 International Law and Politics 271, 276 (1973).

59/ Note, "The Legal Framework for American Direct Investment in Eastern Europe: Romania, Hungary, and Yugoslavia," 7 Cornell International Law Journal 187, 193 (1974).

60/ M. Sukijasovic, Yugoslav Foreign Investment Legislation at Work 67 (1970)

61/ Note, "Joint Ventures in Yugoslavia: 1971 Amendments to Foreign Investment Laws," 6 International Law and Politics, 271, 272 (1973).

62/ M. Sakijasovic, supra note 53 at 135.

63/ There appears to be a few instances of relaxation of total control by the Yugoslav partner, particularly in the area of tourism. Through the joint venture procedure a foreign investor can participate in the construction of a hotel on land to which the state retains the title. The hotel can then be leased by the foreign participant to be run by the alien until invested capital and profits have been returned. Peselj, supra note 57 at 67.

Mexico

Mexico has traditionally maintained a strong policy against alien land ownership. The system evolved by the government to control foreign investment includes a variety of methods extending from prohibition of ownership in certain territory to limitation on the percentage of foreign ownership permitted in any area of investment. 6 / The Mexican legal attitude has been influenced by the large extent of past and present foreign investment within the country. 65/ It is of particular concern to Mexico that much of this investment is in the hands of multinational corporations and recent legislation has been aimed at these investors. 66/

Article 27 of the Constitution of 1917 provides the foundation on which all Mexican land regulation is based. 67/ It has proven to be politically impossible to amend this provision because this article and associated land reform measures have been viewed as one of the major victories of the 1910 Revolution. Yet, foreign investment in real property has been a force in the Mexican economy due to deficient implementation legislation, laxity of enforcement and a desire by many Mexicans for the advantages of foreign capital. The Foreign Investment Law of 1973 attempts to circumvent the actual wording of the Constitution to permit foreign participation while maintaining governmental control and balancing foreign and domestic investment. 68/ The major provisions of Article 27 are:

1. Original title to all land is vested in the Mexican state which can transfer title to private persons. 69/

2. Ownership of all subsurface minerals is vested in the national government. 70/

3. The government may impose any limitations on private property which are in the public interest.

64/ Law of March 9, 1973, Concerning the Promotion of Mexican Investment and Regulations of Foreign Investment [1973] D.O. 5 [hereinafter cited as Investment Law].

65/ At present, 50% of the gross national product achieved principally through the very visible service and retain industries is the result of foreign investment. Gordon, "The Contemporary Mexican Approach to Growth with Foreign Investment: Controlled but Paticipatory Independence," 10 California Western Law Review 1, 34 n. 6 (1973).

66/ Shill, "The Mexican and Andean Investment Codes: An Overview and Comparison" 6 Law and Policy in International Business 437, 488-89 (1974).

67/ Provisions against alien land ownership were in reaction to the policies of President Portifiero Diaz who encouraged the development of the hacienda system and initiated extensive foreign investment, especially in the mineral extraction industry. Diaz was overthrown in the Revolution of 1910. Gordon, supra note 64 at 18-19 n. 55.

68/ Investment Law, art 1.

69/ Gordon, supra note 65, at 21 n. 59.

70/ Id. at 18.

4. Only native or naturalized Mexican citizens and Mexican companies can acquire ownership of land or concessions for the exploitation of mines.

5. The state may grant the right to own land or receive mining concessions to aliens, but only if the foreign nationals agree to consider themselves Mexican nationals in respect to the property and renounce any right to invoke the aid of their own governments in any matters relating to the property.

6. Under no circumstances may a foreigner acquire direct ownership of land in a zone 100 kilometers along the borders and 50 kilometers along the coasts of Mexico. 71/

In contrast to Yugoslavia, original ownership by the state has never been interpreted to mean that the "fullest bundle of legal rights" may not be passed on to the private owner. 72/ As to the second provision, strong Mexican control over mining concessions has been maintained with over 98% of the production resulting from mining concessions to domestic firms. 73/ The waiver of rights to protection by the alien investor's home government and his subjection of his property exclusively to Mexican law have been strictly enforced without foreign opposition and are included in the new investment code. 74/ The central provisions of Article 27 which have been used by Mexico in regulating foreign investment in real estate are the the prohibition on alien purchases without governmental approval and the complete ouster of foreigners from ownership of lands in the "forbidden zone," along the borders and coasts. Both are dealt with in the Foreign Investment Law in an attempt to permit alien investment while maintaining Mexican control in conformity with the Constitution.

The prohibition on alien land ownership in the "forbidden zone" has historically offered the most extensive problems. The broader restrictions were originally conceived as a military security device, especially in relation to Texas, 75/ and were a form of regulation in general use throughout Latin America. Today this territory, which comprises 43% of the nation, 76/ is valued for the coastal tourist industry and the manufacturing industry along the northern border where producers have easy access to U.S. markets without U.S. labor costs. 77/

71/ Id. at 21 n. 59.

72/ Vilaplana, "The Forbidden Zones in Mexico," 10 California Western Law Review 47, 49 (1973).

73/ Gordon, supra note 65, at 3-4 n. 6.

74/ Investment Law art. 2. This is known as a Calvo clause and is generally included in contracts for investment in all Latin American countries. The Calvo clause proviso has not been opposed by the United States government except in cases of flagrant denial of justice in the courts of the host country. Note, "The Calvo Clause: Its Current Status as a Contractual Renunciation of Diplomatic Protection," 6 Texas International Law Forum 289, 306 (1971).

75/ Vilaplana, supra note 72, at 48.

76/ Vilaplana, supra note 72, at 50.

77/ Gordon, supra note 65, at 17.

Prior to the enactment of the types of barriers used in the Foreign Investment Law, ingenious Mexicans and foreigners devised the following methods to avoid the prohibition: 78/

1. Prestanombres (name-lending) -- Title to the real property was in the name of a Mexican national while the foreign "owner" held a promisory note secured by a mortgage on the property. This method was filled with security risks and is not considered illegal.

2. Corporations issuing bearer shares -- Mexican nationals formed a corporation with a clause excluding foreign shareholders (Article 8 corporation) and issued only shares of stock which did not list the buyers name. Such a corporation could then purchase land in the "forbidden zone" and sell the bearer shares to foreigners. Article 25 of the Foreign Investment Law requires that all stock certificates sold to foreigners must be nominative, thus preventing the above masquerade.

3. Double-tier corporations -- A Mexican corporation was formed which included foreigners. This corporation acquired stock in an Article 8 corporation which in turn purchased the land. Although this practice was permitted by the Foreign Ministry and was used extensively in the development of capulco, it is now considered illegal.

4. Alternating leases -- Leases by foreigners for periods of up to 10 years were permitted in the "forbidden zone." Two corporations, by alternating lease periods, could gain continuing use of lands. However, this process is expensive due to high taxes on rental property and during certain periods has been held illegal.

5. Club memberships -- A Mexican Article 8 corporation bought land for development as an athletic or social club. Memberships were then sold to foreigners who were then entitled to use of the club facilities, including exclusive use of a residential lot. This method of avoidance has proven to be inefficient in developing any large area and may be illegal.

Article 7 of the Foreign Investment Law specifically provides that "foreigners, foreign companies and Mexican companies without an exclusion of foreigners clause" cannot acquire land along the coasts and borders. 79/

78/ The following methods of avoidance of Mexican restriction are condensed from Ellsworth, "Mexico Opens the Door to Resort Development," 5 Real Estate Review 36, 38 (1975) and Vilaplana, supra note 72, at 59-63.

79/ Investment Laws, art. 7.

However, it approves of the trust as the only method in which aliens may invest in the "forbidden zone." 80/ This is permissable under the Mexican constitution since a trust is a personal right rather than a real right in land. 81/ Title to the property is held by a Mexican credit institution as trustee which allows the foreigner beneifical use of the property. 82/ Trusts have a maximum duration of 30 years and the fiduciary institution may lease the property for periods up to 10 years. 83/ Certificates of participation in the trust must designate the owner 84/ and the Ministry of Foreign Relations has the power to decide if any trust may be created. 85/ Upon termination of the trust the trust property can be transferred by the trustee to "persons who have the legal capacity to hold it." 86/

The remainder of the real property in Mexico falls under the provisions of the Foreign Investment Law which seek to regulate the percentage of alien control. Although the statute excludes foreign companies from acquiring title land and waters or concessions for the exploitation of waters and prohibits foreign individuals from obtaining title to such property without the authorization of the Ministry of Foreign Relations 87/ it contemplates the acquisition of domestic enterprises by foreign individuals and companies. 88/ Such acquisitions by foreign companies even if the title could not actually be held by them and incorporation in Mexico would probably be an adequate method of avoidance of the restriction.

An alien seeking to invest in Mexico who attempts to obtain actual title or control over land is subject to the provisions of the Foreign Investment Law. In the statute the definition of foreigner has been given a broad scope to include foreign natural persons, foreign legal entities, and domestic enterprises "with a majority of foreign capital, or in which foreigners have, for any reason, the power to control the management of the enterprise." 89/ Foreigner individuals resident in Mexico with the status of immigrants are considered Mexican nationals for the purpose of investing in any activity with the exception of investment in the "forbidden zone" unless they are "connected with economic decision making centers abroad." 90/

80/ Id. art. 18.
81/ Vilaplana, supra note 72, at 52.
82/ Investment Law, art. 18.
83/ Id. art. 10.
84/ Id. art. 21.
85/ Id. art. 19.
86/ Id. art. 20. The only exception to the exclusion of foreigners from the "forbidden zone" is the ability of aliens to maintain their rights in any inherited real property for a period of five years. 6 Martindale-Hubbell Law Directory 3652 (180 ed. 1976).
87/ Investment Law, art. 7.
88/ Id. art. 8.
89/ Id. art. 2.
90/ Id. art. 6. The provisions for connections with "foreign economic decision making centers" is to prevent alien individuals from retiring to Mexico and becoming prestanombres for foreign investors. Gordon, supra note 65, at 42.

Registration is required of all the above named alien investors and is also specifically required of trusts in favor of foreigners. 91/ Provision for penalties for failure to register is included in the law. 92/ These registration procedures should produce the information needed to formulate further central measures should they be deemed necessary. 93/

The Foreing Investment Law reserves specific areas of investment to the Mexican government and others to Mexican nationals or Mexican companies with an exclusion of foreigners clause. In the area of land use these generally include certain types of mining operations and forestry exploitation. 94/ In other segments of mineral exploitation foreign investment is limited to 34%. 95/ In all other fields it is presumed that foreign investment should be limited to 25% of the invested capital or 49% of the fixed assets of an enterprise. 96/ To increase these percentages requires the approval of the National Commission on Foreign Investment created by the investment law. 97/ Guidelines are provided in the law to aid the commission in reaching decisions but none directly relate to land. 98/ However, rural real estate has been one of the areas limited by prior regulations to 49% foreign participation with the usual exception for individual resident aliens. 99/ Penalties are included in the law for Mexicans or foreigners who try to avoid its provisions. 100/ However, it has been suggested that Mexico would prefer voluntary compliance rather than strict enforcement and it may be successful in achieving this result since aliens are eager to invest in Mexico and do not want to antagonize the government. 101/

91/ Investment Law, art. 23.

92/ These include non-payment of dividends, nullification of transactions completed without registration, and fines of up to $8000. Registration may be imposed on any foreign company by governmental initiative. Id. art. 27.

93/ Shill, supra note 66, at 458-59.

94/ Investment Law, art. 4.

95/ Id. art. 5.

96/ Id. art. 8. Gordon, supra note 65,at 22. This includes instances where the management of an enterprise falls under the control of a foreign investor. Investment Law, art. 8.

97/ Investment Law, art. 8, 12.

98/ Id. art. 13.

99/ Perez-Verdia, "How a Nonresident Alien May Engage in Business Operations and Invest in Mexico," 6 Texas International Law Forum 209, 210 (1971).

100/ Fines of up to $8000 may be imposed if the obligations under the law are not met. Mexican notaries and brokers can lose their licenses if they authenticate documents which do not contain the proper authorization. Investment Law, art. 30. In addition, fines of up to $4000 and imprisonment for periods up to nien years can be imposed on "anyone who through misrepresentation permits enjoyment or actual contral by individuals, enterprises or economic units, to which Article 2 of the law refers, of assets or rights which would be subject to requirements of authorization which had not been met or obtained . . . . Id.. art. 31.

101/ Shill, supra note 66, at 476.

Canada

Canada does not have a unified system for monitoring and supervising alien land ownership. This is in part due to the federal nature of the Canadian government which produces competition for control between Parliament and the provincial governments. In addition, Canada's general approach to all foreign investment has been key sector restrictions in certain industries. 102/ This type of piecemeal approach has been reflected in legislation governing land ownership on both the federal and provincial levels. The Foreign Investment Review Act (FIRA) 103/ offers potential unity in scrutinizing alien investment, however, its application to real estate is debatable.

The source of parliamentary authority to regulate alien investment is the British North America Act of 1867 104/ which serves as Canada's constitution. It delegates exclusive power to the Parliament to regulate aliens and trade and commerce. 105/ Control over agriculture is concurrent with the provinces, however, provincial legislation which conflicts with parliamentary acts is valid. 106/

Federal as well as provincial laws relating to alien land ownership are divided into these governings-privately held real estate and those regulating public or crown lands. FIRA may affect both public and private land, however, its boundaries have not yet been established. Prior to the passage of FIRA the controlling federal law concerning alien real property rights was the Canadian Citizenship Act which provides for equality between Canadians and foreigners in the acquisition, use, and transfer of land, including inheritance. 107/

Crown land held by the national government is controlled by the Territorial Lands Act and the Public Lands Grants Act. 108/ Niether restricts alien rights and regulations promulgated under the latter prohibit only grants of oil, gas and mining leases to all noncitizens and foreign corporations. 109/

102/ These include insurance, television and radio broadcasting, loan and trust companies, and banks. Restrictions range from a requirement of 50% - 80% Canadian ownership. Franck and Gudgeon, "Canada's Foreign Investment Control Experiment: The Law, the Context and the Practice." 50 New York University Law Review 76 (1975).

103/ Foreign Investment Review Act, 21-22 Eliz. 2c. 46 (1973) (Can.).

104/ British North America Act of 1867, 30-31 Vict. c. 3 (Can.).

105/ Id. §91(25), (2).

106/ Id. §95.

107/ Canadian Citizenship Act, Can. Rev. Stat. c. 33 §21 (1970).

108/ Spencer, "The Alien Landowner in Canada," 51 Canadian Bar Review 389, 414 (1973), referring to Territorial Lands Act, Can. Rev. Stat. c. T-6 (1970) and Public Lands Grants Act, Can. Rev. Stat., c. P-29 (1970).

109/ Spencer, supra note 108 referring to Territorial Lands Regulations S.O.R. 166-253, §55, 73-13, S.O.R. 162-249 s. 20.

The British North America Act delegates to the provinces exclusive authority to regulate real property 110/ and the "management and sale of public lands belonging" to the province. 111/ Each province has its own attitude toward alien land ownership within its borders. Legislation ranges from positive guarantees to foreigners that their rights in real property are equal to those of Canadian citizens to specific prohibitions on alien acquisition of land. It is significant to note that no province has completely ignored alien rights in real property and in recent years several have been experimenting with restrictions on foreign acquisition of both public and private lands and with various registration procedures.

As with federal legislation provincial laws relating to real property are divided into those dealing with private property and those concerning crown lands. Three provinces have some restrictions on the sale of all public lands to nonresidents or aliens, while two limit the ability of aliens to acquire resort property. Regardless of the restrictions imposed almost all public lands can be leased by aliens.

Regarding privately held real estate, two provinces, Prince Edward Island and Saskatchewan, prohibit nonresident land ownership above a specified amount. Both statutes are phrased in terms of "nonresident" rather than "alien" because if they were applied solely to aliens the laws would be in conflict with the federal Canadian Citizenship Act which gives equal rights in property to Canadians and noncitizens. 112/ The Prince Edward Island and Saskatchewan statutes have come into effect within the past two years and both were the outgrowth of studies conducted by each province. 113/ Both laws are directed at protecting specific lands which have a unique value to these provinces.

Three provinces, Alberta, Nova Scotia, and Ontario, require special registration procedures for alien real estate investors. Alberta's Land Titles Amendment Act 114/ is the narrowest in scope, prescribing a statement designating citizenship for all non-Canadian individuals or corporations with 51% foreign ownership which purchase or agree to pruchase land in fee simple absolute. Nova Scotia's Land Holdings Disclosure Act 115/ has a more ambitious scheme. Registration, including citizenship designation, is required for all nonpermanent residents of Nova Scotia who acquire "land holdings" or anyone who acquires land on their behalf. "Land holding" is expanded beyond the concept of a fee simple transfer to

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110/ British North America Act of 1867, 30-31 Vict. c.3 §92(13). (Can.) See Appendix B for summary of laws of each province.

111/ Id. §92(5).

112/ A recent Canadian Supreme Court decision has upheld the validity of the interpretation. Cutler, "Shall Canada's Land Go to the Richest Bidder?" 90 Canadian Geographic Journal, August, 1975 at 26.

113/ Cutler, "Foreign Demand for Our Land and Resources," 90 Canadian Geographic Journal, April, 1975 at 4.

114/ Land Titles Amendment Act, Alberta Stat. c. 72 (1974) (Can.).

115/ Land Holdings Disclosure Act, Nova Scotia Stat. c. 13 (1969) (Can.).

any interest in land other than a security interest. Registration is mandatory, not only for future purchases, but also for currently held real estate. All corporations must register their "land holdings" unless they fall within specific exceptions. 116/

Finally, the Ontario statutes 117/ serve the dual prupose of registering alien land investors and providing for a 20% tax on their transactions. The scope of application is as broad as in Nova Scotia, including the conveyance of "an interest of any kind in land" with the exception of security interests for debts and transfers to land in which there is a change in legal owner but no change in beneficial ownership. The act defines nonresident as any individual who is not "oridinarily resident in Canada" 118/ or a resident who is not a Canadian citizen. The law covers partnerships, associations of any type, and trusts for which 50% of the ownership or benefit belongs to nonresident individuals. The same percentage criteria is applied to corporations with the additional proviso that even if 50% nonresident ownership cannot be established, registration and payment of the tax is obligatory if it can be shown that the corporation is "controlled directly or indirectly by one or more nonresident persons, including nonresident corporations . . ." 119/ The affidavit of residence requirement for all those subject to the act does not apply retrospectively to ascertain the citizenship of all nonresident land holders. 120/

In addition to the above specific regulations applicable to aliens' land acquisition, the Foreign Investment Review Act (FIRA) 121/ may have some effect on all land transactions in Canada. FIRA was passed in response to concern over the extent of foreign, particularly United States, ownership of domestic enterprises and the resulting detrimental effects to the Canadian economy and society. 122/ A government initiated study of

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116/ The exceptions are a corporation incorporated in Nova Scotia, a corporation registered under the Corporation Registration Act or a corporation actually doing business on the land. Id. §5(4). The final exception appears to provide a large loophole for businesses but would still force the registration of land speculators.

117/ Land Transfer Tax Act, Ontario Stat. c. 8 (1974) (Can.). Land Transfer Tax Amendment Act, (Number 2), Ontario Stat. c. 93 (1974) (Can.).

118/ The phrase "oridinarily resident" includes individuals who have been admitted to Canada for permanent residence or lived in Canada for 366 days during the preceding 24 months. Land Transfer Tax Act, Ontario Stat. c. 8§1(3)(a), (b) (1974) (Can.).

119/ Id. c. 8 §1(1)(f)(v).

120/ Id. c. 20.

121/ Foreign Investment Review Act, 21-22 Eliz. 2, c. 46 (1973) (Can.). [hereinafter cited as FIRA]

122/ Thirty-five percent of Canadian businesses were controlled by foreigners in 1973 (80% of this is controlled by U.S. citizens) and 57% - 99% of the minerals and manufacturing was in the hands of aliens. Espinosa, "The Canadian Foreign Investment Review Act: Red, White, and Gray," 5 Law and Policy in International Business 1018 (1973). The detrimental effects resulting from this situation as perceived by many Canadians were:

foreign direct investment,the Gray Report, 123/ was most instrumental in crystalizing the attitudes of Canadians on the need for some type of control mechanism. The general conclusions of the Gray Report were that Canada had a significantly higher proportion of foreign economic control than any other industrialized country. This control is exercised to a large extent by multinational corporations and foreign investment is not the result of a lack of domestic capital but rather a result of favorable industrial conditions. 124/

FIRA was enacted in order to deal woth these problems by means of a case by case review of projected foreign investment to determine whether such investment would be of significant benefit to Canada and should be permitted. 125/ The act established who is to be considered in the review process by classifying potential investors as "non-eligible persons." This group is basically composed of noncitizens and foreign governments and corporations controlled by either. 126/ Control of corporations is established by a series of rebuttable presumptions based on the percentage of voting rights exercisable by noncitizens or foreign governments. 127/ Any acquisition of control of an expansion of a current business into an unrelated line of activity by such non-eligible persons will subject the transaction to review. 128/ As with the definition of non-eligible person, "control of a Canadian business" is defined by rebuttable presumptions based on the percentage of acquisition of shares of stock of the assets of a business. 129/

The act, however, excludes from the definition of "business" land acquired by individuals or corporations for which no funds are expended except for purchase and maintainance or for personal use and enjoyment by the buyers. 130/

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1. A drain on domestic capital markets.
2. Most important decisions in Canadian manufacturing made outside of Canada.
3. Canadians foreclosed from entering certain markets.
4. Long-term adverse balance of payments effects.
5. Extraterritorial effects of United States laws.
6. Influence of foreign firms on Canadian governmental policy.

Id. 1022-26.

123/ The report was included in a government published background study. Foreign Direct Investment in Canada (1972).

124/ Gualfieri, "Canada's New Foreign Investment Policy," 10 Texas International Law Journal 46, 41 (1975).

125/ The statute lists five factors to be considered in making this determination. They are broad categories which emphasize the economic health of Canada and the effect on domestic enterprises FIRA §2(1).

126/ FIRA §3.

127/ Id. §3(2).

128/ Id. §3(3).

129/ Id. §3(3) - (8).

130/ Id. §3(9).

This was probably an attempt by Parliament to placate the provinces which jealously guard their constitutional prerogatives over regulation of real property. 131/ Guidelines were issued which, although unclear, appear to include some real estate transactions in the review process. This is particularly true if an acquisition of "substantial real property" is involved or if it is "the only asset used in the activity." 132/

In summation, the conflict between the federal and provincial governments has not been resolved and any assessment of the effectiveness of the review process in regulating land can only be made after some sort of agreement has been reached. Clearly, one major purpose of FIRA, to coordinate the treatment of all foreign investment within the country, will have been frustrated if the provinces are able to limit its application. Since the courts have upheld the provinces right to nonresident interests in real property, it would appear that the central government will have to negotiate with the provinces if it wishes to achieve uniformity within the scope of FIRA.

The experiments of the provinces with various types of regulatory methods should prove to be a good source of information as to the efficiency of these methods. It may be found that the unique situation of each province in the amount and type of alien investment in land requires individual treatment and at least in the area of real property uniformity is not the best solution.

Conclusions

International law, customary and treaty, governs nation states in their dealings with foreign nationals. This law gives states broad latitude to regulate land use and ownership.

Underdeveloped countries and socialist countries are redistributing the beneficial use of land and have the most restrictive regulatory statutes while most developed countries have minimal restrictions.

The countries with the most regulations have found that their regulations can be avoided by a number of legal artifices or have found a need for foreign capital so that there is actually much foreign investment in the beneficial use of real property.

The United States Constitution protects aliens as well as nationals in the ownership and use of real property. And violations of these Constitutional requirements do not give rise to international responsibility unless there is also a violation of international law.

131/ Franck and Gudgeon, supra note 102, at 120 n. 242.

132/ Id. 120 n. 243, 121 nn. 244, 245. The phrase "substantial real property" has been interpreted to mean a value at $10,000 or greater. In addition, it has been suggested that if the land acquired has some income producing asset on it the transaction would fall under the provisions of the act. Bonney, "Foreign Investment Review Act," 13 Alberta Law Review 83, 87 (1975).

However, the United States has by treaty specifically granted to citizens of Denmark and Ireland the right to own land for certain specified purposes, including almost every possible use except that of agriculture and mining. Additionally, six other treaties give other foreign nationals most favored nation treatment as to the acquisition and possession of land while there are eleven treaties giving national treatment for leasing for these same purposes and six more giving most favored nation treatment.

In short, a large number of treaties now exist that would be violated by a national statute broadly regulating the use of only agricultural land appears to be possible without any violation of existing treaties. The regulation of ownership and use of mining lands is on less stable ground since there are treaties granting most favored nation treatment to foreign nationals for mining. Given our interest in world wide mineral exploration, it seems likely that a bilateral treaty giving national treatment to aliens is a probability.

A state statute violating a treaty is rendered a nullity by operation of law while a federal statute would be binding within the country though subjecting the United States to sanctions under international law. State regulation follows the safest course and one least likely to upset our international relations.

Until we determine the extent and pattern of foreign investment in land, no wise determination as to the type of regulation needed can be made.

This leads us to recommend the adoption of a statute designed to gather the necessary information on alien investment in land. A registration statute would not violate existing treaties.

An effective statute could be modeled on the Iowa Statute expanded to cover all forms of beneficial alien interests in land.

Appendix A

Citations to Selected Treaties

Argentina
Treaty of Friendship, Commerce, and Navigation, July 27, 1853,
10 Stat. 1005, T.S. No. 4.

Australia
United Kingdom Convention as to Tenure and Disposition of Real and
Personal Property, May 27, 1936, 55 Stat. 1101, T.S. No. 964.

Bolivia
Treaty of Peace, Friendship, Commerce, and Navigation, May 13, 1858,
12 Stat. 1003, T.S. No. 32.

Canada
United Kingdom Convention as to Tenure and Disposition of Real and
Personal Property, October 21, 1921, 42 Stat. 2147, T.S. No. 663.

Colombia
Treaty of Peace, Amity, Navigation, and Commerce, December 12, 1846,
9 Stat. 881, T.S. No. 54.

Denmark
Treaty of Friendship, Commerce, and Navigation, October 1, 1951,
12 U.S.T. 908, T.I.A.S. No. 4797.

Ecuador
Treaty of Peace, Friendship, Navigation, and Commerce,
June 13, 1839, 8 Stat. 534, T.S. No. 76.

Ethiopia
Treaty of Amity and Economic Relations, September 7, 1951,
4 U.S.T. 2134, T.I.A.S. No. 2864.

Finalnd
Treaty of Friendship, Commerce, and Consular Rights, February 13, 1934,
49 Stat. 2659, T.S. No. 868.

France
Convention of Establishment, November 25, 1959, 11 U.S.T. 2398,
T.I.A.S. No. 4625.

West Germany
Treaty of Friendship, Commerce, and Navigation, October 29, 1954,
7 U.S.T. 1839, T.I.A.S. No. 3593.

Greece
Treaty of Friendship, Commerce, and Navigation, August 3, 1951,
5 U.S.T. 1829, T.I.A.S. No. 3057.

Guatemala
Treaty of Peace, Amity, Commerce, and Navigation, March 3, 1849,
10 Stat. 875, T.S. No. 149.

Honduras
Treaty of Friendship, Commerce, and Consular Rights,
December 7, 1921, 45 Stat. 2618 T.S. No. 764.

Iran
Treaty of Amity, Economic Relations, and Consular Rights,

Ireland
Treaty of Friendship, Commerce, and Navigation, January 21, 1950,
1 U.S.T. 785, T.I.A.S. No. 2155

Israel
Treaty of Friendship, Commerce, and Navigation, August 23, 1951,
5 U.S.T. 550, T.I.A.S. No. 2948.

Italy
Treaty of Friendship, Commerce, and Navigation, February 2, 1948,
63 Stat. 2255, T.I.A.S. No. 1965.

Japan
Treaty of Friendship, Commerce, and Navigation, April 2, 1953,
4 U.S.T. 2063, T.I.A.S. No. 2863.

Korea
Treaty of Friendship, Commerce, and Navigation, November 28, 1956,
8 U.S.T. 2217, T.I.A.S. No. 2947.

Latvia
Treaty of Friendship, Commerce, and Consular Rights, April 20, 1928,
45 Stat. 2641, T.S. No. 765.

Liberia
Treaty of Friendship, Commerce, and Navigation, August 8, 1938,
54 Stat. 1739, T.S. No. 956.

Luxembourg
Treaty of Friendship, Establishment, and Navigation, February 23, 1962,
14 U.S.T. 251, T.I.A.S. No. 5306.

Netherlands
Treaty of Friendship, Commerce, and Navigation, March 27, 1956,
8 U.S.T. 2043, T.I.A.S. No. 3942.

New Zealand
United Kingdom Convention as to Tenure and Disposition of Real and Personal Property, May 27, 1936, 55 Stat. 1101, T.S. No. 964.

Nicaragua
Treaty of Friendship, Commerce, and Navigation, January 21, 1956, 9 U.S.T. 449, T.I.A.S. No. 4024.

Pakistan
Treaty of Friendship, Commerce, and Navigation, November 12, 1959, 12 U.S.T. 110, T.I.A.S. No. 4683.

Saudi Arabia
Provisional Agreement Respecting Diplomatic and Consular Representation, Juridical Protection, Commerce, and Navigation, November 7, 1933, 48 Stat. 1826, E.A.S. No. 53.

Spain
Treaty of Friendship and General Relation, July 3, 1902, 33 Stat. 2105, T.S. No. 422.

Sweden
Consular Convention, June 1, 1910, 37 Stat. 1479, T.S. No. 557.

Switzerland
Treaty of Friendship, Commerce, and Extradition, November 25, 1850, 11 Stat. 587, T.S. No. 353.

Thailand
Treaty of Amity and Economic Relations, May 29, 1966, 19 U.S.T., T.I.A.S. No. 6540.

Togo
Treaty of Amity and Economic Relations, February 8, 1966, 18 U.S.T., T.I.A.S. No. 6193.

United Kingdom
Convention as to Tenure and Disposition of REal and Personal Property, March 2, 1899, 31 Stat. 1939, T.S. No. 146.

Venezuela
Treaty of Peace, Friendship, Navigation, and Commerce, January 20, 1836, 8 Stat. 466, T.S. No. 366.

Yugoslavia
Treaty of Commerce and Navigation, October 14, 1881, 22 Stat. 963, T.S. No. 319.

Appendix B

Canadian Provincial Regulation of Alien Land Investment

Alberta

Public Lands

Alberta prohibits sale of public lands to non-Canadian individuals or corporations (25% foreign ownership) or trustees for either. Limited exceptions are allowed if the alien purchaser agrees to restrict use of the land and to retransfer title to the government if the restrictions are violated. All transactions are required to be registered under the Land Titles Amendment Act.*

Private Lands

The Land Titles Amendment Act, 1974, provides for the designation of citizenship in the registration of transfer of land title where an individual or trustee transferee is not Canadian or, in the case of corporations, a majority of the shares are held by non-Canadians.*

British Columbia

Public Lands

Sales of crown lands to aliens are prohibited.** Leases are restricted to Canadians and landed immigrants. Leases to foreigners existing in 1973 may be renewed on a short-term basis if certain requirements are met. For corporations this means a majority of Canadians must be on the board of directors with one of these being a British Columbia resident.***

Private Lands

Aliens are treated the same as Canadian citizens.**

Sources

* Provincial statutes.

** Spencer, "The Alien Landowner," 51 Canadian Bar Review 389 (1973).

*** Cutler, "Foreign Demand for Our Land," 90 Canadian Geographic Journal, April, 1975.

**** 6 Martindale-Hubbell Law Directory 2881 (180 ed. 1976).

Manitoba

Public Lands

Regulations promulgated under the Manitoba Crown Lands Act ban grants of crown lands to aliens with an exception in favor of foreigners "oridinarily resident" in Manitoba.** Aliens may lease these lands.***

Private Lands

Aliens may acquire, hold and transfer land on the same basis as Canadian citizens.*

New Brunswick

Public Lands

No restrictions on grants or leases to aliens.**

Private Lands

Aliens may acquire, hold and convey land without restriction.**

Newfoundland

Public Lands

The Crown Lands Amendment Act, 1971, includes a ban on grants of public lands to persons not resident in the province. This has never been put into force by proclamation** with the result that there are no restrictions on the sale or lease of crown lands to aliens.

Private Lands

Newfoundland has no restriction on nonresident ownership or lease of land and no registration of transactions with nonresidents is required.***

Nova Scotia

Public Lands

Nova Scotia has no restrictions on grants or leases of crown land to nonresidents,** however, grants of crown lands to anyone are rare and such land is generally leased.***

Private Lands

The Real Property Act provides for equality of treatment for alien individuals and corporations in acquiring, holding, and conveying real property. Since 1969, nonresidents and corporations which own "any interest in land" must complete a "disclosure statement,"* giving addresses, origin of owner, acreage, and purpose of purchasing.*** Penalties may be imposed for failure to comply.

Ontario

Public Lands

The lease of crown land for use as summer resorts is restricted to Canadian citizens.**

Private Lands

The Alien Real Property Act states that aliens have the same rights in land as Canadians.* However, the land Transfer Tax Act, 1974, provides for a 20% tax on all conveyances of land (including leases and options) to any nonresident. Nonresident individuals are noncitizens, those not "ordinarily resident" in Canada or admitted to Canada for permanent residence. A corporation is non-resident when 50% of the shares are owned or controlled by nonresident individuals. Trusts, partnerships, or any other type of organization or association with 50% of the benefit or ownership in the control of nonresident individuals are nonresident. In addition to the tax on conveyances to nonresidents, an affadavit must be completed, listing all nonresident owners. There are penalties for failure to comply.*

Prince Edward Island

Public Lands

There is no legislation on crown land but the province has no public land to dispose of.**

Private Lands

No person, not a resident of the province, can "acquire, hold or in any other manner receive either himself, or through a trustee, corporation or any such the like, title to any real property in the province" the aggregate of which exceeds ten acres or has a shore frontage in excess of 330 feet, unless permission is granted by the government.**

Quebec

Public Lands

There are no restrictions on sales or leases to non-residents*** but Quebec charges aliens higher rents for land to be used for resorts.**

Private Lands

There are no restrictions on aliens' rights in real property.**

Saskatchewan

Public Lands

Although the Public Lands Act and the Lands and Forests Act provide the authority for the issuance of restrictions, no regulations have yet been promulgated.**

Private Lands

An Act to protect certain Civil Rights, 1965 provides that there can be no discrimination in the purchase lease, rental or possession because of the national origin.* However, a 1974 law limits the amount of land a nonresident individual (one who lives outside the province for more than one-half of each year) to aggregate land holdings in the amount of $15,000. If a nonresident intends to become a resident within three years, he may apply for an increase. Farmers in Canada and the United States living along the border are exempted.*** Land acquired prior to 1974 is exempted. An indivi ual who has lived on his farm for at least five years may sell, give or bequeath land to a close relative regardless of his place of residence,*** but the nonresident must dispose of it within five years. Non-agricultural corporations are limite to 160 acres of farmland*** and any excess must be disposed by 1999.****

Table 1--Treaty provisions modifying or superseding state restrictions on alien land ownership

Country 1/	Treaty Provisions							
	National treatment Re: acquisition	National treatment Re: inheritance	MFN */ treatment Re: acquisition and possession	Ownership for specified purposes 2/	Lease for specified purposes 2/		MFN treatment Re exploration and exploitation of natural res.	Time allowance for disposition if alien status prevents possession
					National treatment	MFN treatment		
Argentina	X							
Australia								X
Bolivia								X
Canada								X
Colombia		X						
Denmark		X		X			X	
Ecuador								X
Ethiopia						X		
Finland								X
France			X		X			
W. Germany							X	
Greece					X			X
Guatemala								X
Honduras						X		X
Iran						X		
Ireland	X	X		X				
Israel					X			X
Italy						X		X
Japan					X		X	X
Korea	X	X			X		X	X
Latvia						X		X
Liberia						X		X
Luxembourg		X			X			X
Netherlands		X	X		X		X	X
New Zeland								X
Nicaragua					X		X	X
Pakistan					X			X
S. Arabia			X					
Spain			X					X
Sweden			X					
Switzerland								X
Thailand					X		X	
Togo					X		X	
U. Kingdom								X
Venequela								X
Yugoslavia			X					

*/ Most-favored nation. 1/ For treaty citations see Appendix A.
2/ The allowable uses are generally all residential, industrial, and

Table 1--Treaty provisions modifying or superseding state restrictions on alien land ownership

Country 1/	Treaty Provisions							
	National Treatment Re: Acquisition	National Treatment Re: Inheritance	MFN Treatmen Re: Acquisition & Possession	Ownership for Specified Purposes 2/	Lease For Specified Purposes 2/		MFN Treatment Re: Exploration & Exploitation of Natural Resources	Time Allowance For Disposition If Alien Status Prevents Possession
					National Treatment	MFN Treatment		
Argentina	X							
Australia								X
Bolivia								X
Canada								X
Colombia		X						
Denmark		X		X			X	
Ecuador								X
Ethiopia						X		
Finland								X
France			X		X			
West Germany							X	
Greece					X			X
Guatemala								X
Honduras						X		X
Iran						X		

Ireland	X	X		X				
Israel					X			X
Italy						X		X
Japan					X		X	X
Korea	X	X			X		X	X
Latvia						X		X
Liberia						X		X
Luxembourg		X			X			X
Netherlands		X	X		X		X	X
New Zealand								X
Nicaragua					X		X	X
Pakistan					X			X
Saudi Arabia			X					
Spain			X					X
Sweden			X					
Switzerland								X
Thailand					X		X	
Togo					X		X	
United Kingdom								X
Venezuela								X
Yugoslavia			X					

*/ Most-Favored Nation
1/ For treaty citations see Appendix A.
2/ The allowable uses are generally all residential, industrial, and commercial purposes with the exception of mining and agriculture.

LAND INFORMATION SYSTEMS

Robert N. Cook*

Land Data Systems Presently in General Use

Public Systems

There are two parallel systems of collection, organization, storage and retrieval of information about land generally being maintained in the United States. One is public; the other private. Both systems are fragmented in the extreme with no central management or unity of either purpose or method within them. They tend to share only the common characteristic that they are narrowly organized to meet a specific need in each case.

Within the public system, for example, are the various officials, usually county employees, except in the New England states where the towns are the political units for this purpose, who keep records pertaining to the title to real property, such as deeds, mortgages,

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This paper was prepared with the assistance of a Special Committee of the North American Institute for Modernization of Land Data Systems (MOLDS). MOLDS is a non-profit corporation incorporated October 11, 1974 in the District of Columbia for the purpose of scientific research and education related to the development and utilization of improved government operated land data systems. The MOLDS Board of Directors includes nine representatives of governmental agencies and seven representatives of professional organizations from the United States, Canada, and Mexico. The Members of the MOLDS Special Committee are

Robert N. Cook and John S. Kellogg, American Bar Association, Section of Real Property, Probate and Trust Law;

Captain John O. Phillips, U.S. Department of Commerce, National Oceanic and Atmospheric Administration;

Eunice Ayers, National Association of County Recorders and Clerks;

Richard R. Almy, International Association of Assessing Officers.

wills, judgments and other liens, etc. The local governmental officials who keep these title records generally do not know with any certainty who owns any specific parcel. They can refer interested persons to name indexes (grantor-grantee; grantee-grantor) from which with much diligent effort, can be located in the records copies of documents wherein the party named in an index is a party to the document. In a relatively few counties or towns, the local officials will refer interested persons to an index where the documents affecting a specific parcel of land have been listed in a tract index with documents to other parcels in the same block, section, or quarter section. In still fewer cases a public official can tell you who owns a particular parcel where a title registration system usually called a Torrens system, is in operation. A few recording districts have or are implementing an index by specific parcels.

Having located the applicable title documents, it is then the responsibility of the searcher to determine what effect, if any, they have on the title. Lawyers who specialize in title examination usually make this determination.

The designation of the public official who maintains the records of title documents varies from place to place. The words clerk, register, or recorder are often in the titles. Even probate judge is used in some counties.

There are many other public systems of land data presently in operation. Tax assessors maintain a vast land record system. Some of the other departments which maintain land records are the street, health, zoning, planning, building, fire, agriculture, and environmental departments. These special land records usually do not completely duplicate each other because information significant to one public official may be of little or no interest to another public official. Each system is built and operated to furnish particular public officials with the land data which they need and with nothing more.

Private Systems

There are also the private land data systems. Prominent, but by no means the only ones, are the systems maintained by abstracters and title insurance companies. The primary concern of these systems is the determination of ownership of interests in land, but they often include information such as sales prices of parcels, so the abstracter or title company can furnish this data to real estate sales offices. Most of the private land title systems are based on parcel indexes. Parcel indexes are used because they are more efficient, convenient and safer to use than the parallel public record system which contains, in a less useful format, exactly the same information. Purchasers of land must pay extra to maintain two expensive duplicate systems.

In 1968, Laurence J. Ptak, then Treasurer of the American Land Title Association deplored the cost of maintaining duplicate sets (public and private) of title records.

> ... Our title plants are, in essence, a duplication of the public records. The differences are that, on the one hand, we index geographic data geographically whereas the public offices index geographic data alphabetically -- on the other hand, we take the alphabetic data in multiple public offices and bring them together in a single alphabetic index in our offices.
>
> Surely, this duplication is an enormous and unconscionable waste and we should find a means to eliminate it.[1]

In addition to land data systems of abstracters and land title companies, other private land data systems include those kept by railroads, gas, telephone, electric and water companies, real estate brokers, oil companies, and many others. As with the public systems, each one is aimed toward meeting a very specific need, and goes no further than necessary for that particular purpose.

Developing A Modern, Multi-Purpose Land Data System

United States

To describe what we have, immediately suggests what we could have, if we could find the way to combine everything into a single data system capable of serving all users. This concept has been urged for many years by many people. The writer has been working with these people for two decades in the development and implementation of a modern land data system.[2]

In 1963 the Section of Real Property, Probate and Trust Law of the American Bar Association created the Committee on the Improvement of Land Title Records under the chairmanship of the writer.

This Committee studied methods being used to keep land title records, the use of computers to modernize the system, and the use of modern mapping and surveying technology to provide the users of these records with a highly efficient and low-cost land record system, including computerized mapping. This Committee decided that a multi-purpose land record system, with a parcel index, fully using modern technology, and designed to avoid unnecessary duplication and to keep the data current would provide the most efficient method to keep

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1/ Ptak, A Systems Analysis Approach to Titles and Land Information in PROCEEDINGS OF A WORKSHOP ON PROBLEMS OF IMPROVING THE UNITED STATES' SYSTEM OF LAND TITLES AND RECORDS, JULY 25-29, 1968, 109, 111-113 (J. White ed., 1968) Indiana University-Purdue University at Indianapolis.

2/ See R. Cook, Land Law Reform: A Modern Computerized System of Land Records, 38 U. CIN. L. REV. 385 (1969).

land records.[1] Such a multi-purpose system would meet the data needs of owners, purchasers, mortgagees and others for land title data; of tax assessors for land use, ownership, and market data; of administrative agencies responsible for the enforcement of zoning, building, health, fire, safety, occupancy, environmental, and similar codes; of administrative agencies responsible for the construction and maintenance of highways, streets, water and sewer systems, and parks and of land planners. By eliminating unnecessary duplication, - and frequent special projects to gather land data which were not always reliable and often became out of date before they were used, - the cost of an efficient multi-purpose public land data system might be less than the cost of numerous inadequate separate systems. The system favored by the American Bar Association Committee was called a Comprehensive, Unified, Land Data (CULDATA) System with the following characteristics:[2]

> First. Description of land by use of coordinates which are tied in to the national control system and which meet recognized legal standards for land descriptions.
>
> Second. A modern system of land title records with an index by parcels as well as by owners.
>
> Third. Use of a code number for each parcel indicative of its geographic location, for example, the coordinates for the southwest corner.
>
> Fourth. Use of the same parcel code number for land title, taxation, land use, and land planning.
>
> Fifth. Use of ... aerial photography, orthophotography, photogrammetry, modern devices for measuring distances, electronic data processing, microphotography, and modern methods of reproducing documents. These modern devices and systems are available and if properly used may produce substantial savings as well as increased efficiency in the collection, storage, retrieval, and use of land data.

1/ See A.B.A. Committee on Improvement of Land Records, Improvement of Land Title Records, 1 REAL PROPERTY, PROBATE & TRUST J. 191 (1966); A.B.A. Committee on Improvement of Land Title Records, Cooperation for Better Land Records, 3 REAL PROPERTY, PROBATE & TRUST J. 397 (1968).

2/ See PROCEEDINGS OF THE TRI-STATE CONFERENCE ON A COMPREHENSIVE UNIFIED LAND DATA (CULDATA) SYSTEM (R. Cook & J. Kennedy, Jr. eds. 1967) College of Law, University of Cincinnati. Preliminary research on the system's feasibility and The Tri-State Conference which was held at the College of Law, University of Cincinnati, December 1966, were financed by small grants from the Economic Research Service of the United States Department of Agriculture.

Sixth. Use of a national system of code numbers to identify natural persons, corporations, and organizations. Refinement of the Social Security Numbers for natural persons and use of an improved system of Internal Revenue Service Numbers for corporations and organizations may provide an acceptable national system of identifiers for natural persons and organizations.

Seventh. Coordination of local, state, and federal activities in the collection, storage, retrieval, and use of land data, indluding use of standard code manuals.

Following the Tri-State Conference in 1966, the broad and strong interest in moving forward with the development and implementation of the Culdata System caused the Legal Aspects Subcommittee, North Central Land Economics Research Committee, with the cooperation of the Economic Research Service of the U.S. Department of Agriculture, to sponsor and organize a successful Workshop at Mackinac Island, July 25-29, 1968 on Problems of Improving the United States System of Land Title Records.[1] Although there was general agreement at the Tri-State Conference and at the Mackinac Workshop that the basic building block for a land data system should be the parcel, there was a lack of agreement as to a basic parcel identifier that might be used at the local, state and federal levels.

Through the efforts of the officers of the American Bar Association Section of Real Property, Probate and Trust Law and members of the Section's Committee on the Improvement of Land Title Records, the American Bar Foundation agreed to sponsor and organize a 1972 Conference on Compatible Land Identifiers - the Problems, Prospects, and Payoffs (CLIPPP).[2]

Because the basic parcel identifier will be used most frequently at the local level, the CLIPPP Conference agreed that it should be in state plane coordinates or "if available at the time of implementation in a particular locality, the metric coordinates of a modified Transverse Mercator zone approved by the National Geodetic Survey ..."[3] This type of identifier is easily convertible to latitude and longitude

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1/ See PROCEEDINGS OF A WORKSHOP ON PROBLEMS OF IMPROVING THE UNITED STATES SYSTEM OF LAND TITLES AND RECORDS, JULY 25-29, 1968 (J. White ed. 1969), Indiana University-Purdue University at Indianapolis.

2/ See LAND PARCEL IDENTIFIERS FOR INFORMATION SYSTEMS (D. Moyer & K. Fisher eds. 1973), American Bar Foundation. This document contains papers of the CLIPPP Conference and a major section by Moyer and Fisher summarizing the conference conclusions.

3/ Id. at 105.

by a computer and to other related plane coordinates such as those of the Universal Transverse Mercator System.

The recommendation of the CLIPPP Conference as to the parcel identifier is as follows:

> The parcel identifier system that we recommend consists of a state number, a county number, and a parcel number composed of grid coordinates. The state and county numbers are those state and county codes suggested in the Federal Information Processing Standards (FIPS). For states that do not use the term "county," FIPS codes are assigned to the "first-order subdivisions" of the state (e.g. parish, borough, district, division, etc.). The parcel number recommended consists of the State Plane Coordinate (SPC) values for the approximate (visual) center ("para-centroid") of the parcel.[1]

The CLIPPP Conference agreed that in addition to a basic parcel number, a parcel would commonly have a street address, and during a transitional period a tax number.

Massachusetts Land Records Commission

In 1974 Massachusetts created the Massachusetts Land Records Commission in the Department of Community Affairs. Briefly, the responsibility of the Commission is to develop and implement a modern land data system beginning with the title records. The Commission's Executive Director is MacDonald Barr, of Boston.

The Massachusetts Land Records Commission has had several major research papers on coordinates, maps, and parcel identifiers prepared by Hartmut Ziemann of the National Research Council, Ottawa, Canada. This Commission in its January 1976 Program Statement[2] stresses the importance of a pilot project of a modern land data system which will be transferable anywhere within the United States and be compatible with a national system. The Commission also wisely suggests that the six New England states join together to finance and plan the pilot project. Such a consortium would be a logical development of the work presently being undertaken by some of these states to develop a modern land data system.

1/ See LAND PARCEL IDENTIFIERS FOR INFORMATION SYSTEMS (D. Moyer & K. Fisher eds. 1973), American Bar Foundation.

2/ Copies of the Massachusetts Land Records Commission's 1976 Program Statement may be obtained from the Commission's Executive Director, Department of Community Affairs, 141 Milk Street, 5th Floor, Boston 02109.

Forsyth County, North Carolina

While the Massachusetts Land Records Commission is preparing to institute its pilot project, the Forsyth County, North Carolina program to modernize the county land records is nearing the completion of its first phase. The Forsyth County program is one that can be utilized by any county in the United States. The Forsyth County Public Information Office, Hall of Justice, Winston-Salem, North Carolina, 27101 publishes a series of Technical Bulletins which describe the Forsyth County Land Records-Based Information System and how it is being implemented. The Forsyth County System has been financed primarily by the cooperation of local governmental officials through the pooling of resources.[1]

Canada

While the United States was having a series of conferences on the development of a Modern Land Data System, similar activity was occurring in Canada. The strongest impetus in Canada for the development of a Modern Land Data System centered in the Maritime Provinces of New Brunswick, Prince Edward Island, and Nova Scotia.[2]

In addition to the Canadian Maritime Provinces, other Canadian provinces are active in the development and implementation of a Modern Land Data System.[3]

Of Canadian provinces, Ontario is the one most similar to the large industrial states in the United States. In 1971 the Ontario Law Reform Commission, Department of Justice, in its Report on Land Registration set forth the need for a modern land data system for Ontario similar to the Culdata System and favored its development. Ontario is currently developing and preparing to implement such a system. Presently the national Canadian organizations and governmental agencies most involved in the development and implementation of a modern land data system are the Canadian Institute of Surveying, the Canadian Bar Association, the National Research Council of Canada, the Department of Energy, Mines and Resources, and the National Advisory Committee on Control Surveys and Mapping. In most,

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1/ Mrs. Eunice Ayers, Forsyth County Register of Deeds, was instrumental in development of the Forsyth System.

2/ A Symposium on Land Registration and Data Banks was held November 13 to 15, 1968 at the University of New Brunswick, Fredericton, New Brunswick. The papers presented at this symposium are published in volume 23 of the Canadian Surveyor, issues Nos. 1 and 2 (1969).

3/ This activity is described by Colin D. Hadfield in Volume 43, No. 3 of the University of Cincinnati Law Review, pages 513 to 525 (1974) under the title Computerization of Land Title Records.

if not all, Canadian provinces there are provincial organizations and agencies working toward the development and implementation of a modern land data system. In Canada, as in the United States and other countries which are developing and implementing modern land data systems, there is substantial agreement that the basic building block should be the legal parcel, that plane coordinates should be used to describe each parcel, that these plane coordinates should be convertible to latitude and longitude and to other plane coordinates such as those of the Universal Transverse Mercator System.

One of the principal Canadian advocates of a modern land data system has been Dr. T. J. Blachut, Head of Photogrammetric Research, Division of Physics, National Research Council, Ottawa, Canada. Dr. Blachut and the writer collaborated in planning the program of the successful North American Conference on Modernization of Land Data Systems: A Multi-Purpose Approach which was held in Washington, D.C. in April 1975.[1] This conference was made possible through the financial support of a number of organizations and governmental departments and the organization and assistance of MOLDS.

Canadian systems to a large extent are based on the idea of a cadastre. Dr. Blachut's introductory statement to a 1974 Conference on Concepts of a Modern Cadastre is so timely that selected portions of it are set forth below:

> A cadastre is a land survey and record system, kept continuously up to date, that defines and is based on individual land parcels and that is conceived in a form suitable for direct use in many fields of application. The field and aerial survey, along with legal definitions and rights, is the core of a cadastral system and a basis of land records. A meaningful map that permits reference of the land properties to man-made and natural terrain features is essential. It correlates various physical, economic and social facts indispensable to rational administration, planning, monitoring environmental changes and the general development of the country. In countries where the cadastre has been fully developed with these considerations paramount, it is often referred to as an economic cadastre because, in addition to securing the real property rights in an orderly fashion, it is also an indispensable element in the general economic life of the country. It provides a kind of "canvas" on which a multitude of other information and data can be correlated, organized and presented in packages to meet particular requirements.

1/ Proceedings of this conference entitled Modernization of Land Data Systems are available from MOLDS, 210 Little Falls Street, Falls Church, Virginia 22046

> ... It must be noted, however, that present science and technology have put at our disposal, efficient means of rapid production and processing of cadastral information and other data. Consequently, once the decision has been made as to the basic principles and operational features of the system one must expect extremely rapid growth of the system and a large accumulation of data. It is therefore most important that the system be carefully designed to avoid major deficiencies and limitations. At the same time, its design must provide sufficient flexibility to permit unavoidable modifications when requirements change with the times. That is why a discussion of the basic concepts of a modern cadastre at this time is of such crucial importance.
>
> In Canada, land survey and record systems are the responsibility of the provinces, which are free to make decisions on their own requirements. However, there is also a distinct national interest in maintaining uniformity of basic cadastral structures. Most federal departments will be interested in using information provided by future provincial cadastral systems. It is only logical to provide a degree of uniformity sufficient to permit efficient exchange of information. Obviously, this matter cannot be left to itself in the hope that a desirable coordination will automatically occur as a proverbial deus ex machina. On the other hand, one should not expect any basic difficulties in effecting some coordination. The matter is, however, of extreme importance and negligence in this regard could have very serious consequences.[1]

Congress

From time to time Congress has indicated its concern that there is presently no adequate federal land data system. In 1972 Congress passed H.R. 56 to provide an environmental data system and to decentralize environmental research. This bill was vetoed by President Nixon primarily because of the provision for decentralization of environmental research. The President also believed the needed environmental data system could be developed under existing federal laws without specific legislation.

Unfortunately the federal administrative agencies have failed to develop and implement a much needed environmental data system.

1/ T. Blachut, Introduction, 29 THE CANADIAN SURVEYOR 5 (1975).

In 1974 Congress enacted Public Law 93-533 known as the Real Estate Settlement Procedures Act of 1974. Section 13 of this law provides:

> The Secretary [of Housing and Urban Development] shall establish and place in operation on a demonstration basis, in representative political subdivisions (selected by him) in various areas of the United States, a model system or systems for the recordation of land title information in a manner and form calculated to facilitate and simplify land transfers and mortgage transactions and reduce the costs thereof, with a view to the possible development (utilizing the information and experience gained under this section) of a nationally uniform system of land parcel recordation. (Underscoring supplied.)

Currently, pursuant to this law the Department of Housing and Urban Development is obtaining from various professional organizations interested in the improvement of land data systems (particularly those pertaining to title records) statements as to the defects of current systems, and what might be done to improve them. In the near future an intensive study of existing land data systems will probably be financed by the Department of Housing and Urban Development. This study will include recommendations as to the specific aspects of a pilot operation of a modern land data system, with emphasis on title documents, that might be used by counties and other local governments in any state.

Civil Defense Legislation and Administration

From time to time as threats to the security of the United States occur there is increased interest in civil defense. For the same reason that there has to be continued development of the nation's military defense posture there is a need to consider the basic needs of civil defense in developing a modern land data system.[1] These basic needs include data with respect to utilities, defense plants, transportation, agriculture, communication, health facilities, financial data, and land ownership, including mortgages, and liens.

Executive Order 11725, as amended,[2] transferred to the Administrator of General Services the authority given to Office of Emergency Preparedness by Executive Order 11051.[3] Section 208 (b) of Executive

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1/ Executive Order 11490, as amended, 3 C.F.R. 211 (1974) sets forth the civil defense responsibilities of various federal departments, boards, commissions, and agencies.

2/ 3 C.F.R. 367 (1974).

3/ 3 C.F.R. 98 (1974).

Order 11051, as amended by Executive Order 11725 provides that the Administrator of General Services "shall provide advice and guidance to the States with regard to preparations for the continuity of State and local civilian political authority in the event of nuclear attack on the United States which shall include, but not be limited to, programs for ... safekeeping of essential records ..."

Land Data for Legislating

While essential, the need of Congress to know the extent of land ownership in the United States by foreign nationals is probably not as great as its need to have readily available other data essential to carrying out its legislative responsibilities. In the consideration, enactment, and amendment of legislation pertaining to transportation (trains, trucks, buses, airplanes, ships, urban, inter-urban,rural, etc.), food (production, storage, distribution, etc.), energy (nuclear, steam, water-power, siting, hazards, etc.), coastal zone management (off-shore leases, safeguards, on-shore development, etc.) air pollution, housing, water (conservation, pollution, drainage, distribution, etc.) parks, forests (public, private), mining (public land, private land, strip, etc.) and many other subjects requiring current, reliable land data, Congress needs a multi-purpose federal land data system.

H.R. 3510 and S. 984 in this Congress, as did similar bills on land use in prior Congresses, contain specific provision for obtaining data as to land use. Whether or not these and other bills pertaining to land pass this or subsequent congresses, there will be an increasing Congressional need for current land data.

While the needs of Congress for land data are substantial and can be met best by a multi-purpose federal land data system consisting of various subsystems and properly coordinated with state and local land data systems, there is probably greater need by administrative departments, commissions and agencies for such a system.

Data for Administering

There is presently no published document which sets forth all the fragmented land data systems which exist within the federal government. The Office of Management and Budget is presently considering the creation of an Inter-Agency Committee on Land Use Data. Since this Committee should consider the use of modern technology to obtain needed data, a representative of the Office of Science and Technology Policy[1] should be a committee member. Because of the nature of their administrative responsibilities, the following administrative units should have some type of coordinated land data system:

General Services Administration: Land Owned or Leased in Connection with the Operation of the Federal Government.

1/ Pub. L. No. 94-282, 90 Stat. 459 (May 11, 1976).

Department of the Interior: Parks, Public Lands other than Parks, Outer Continental Shelf, Leases of Public Lands, Geological Survey.

Department of Agriculture: Public Forests, Data about Private Farm and Forest Land, Land Financed through Loan Programs, Water Sheds, Rural Electrification.

Department of Transportation: Interstate Highways, Airports, State Highways maintained with Federal Funds.

Department of Commerce: Geodetic Surveying, Coastal Zone, Census Information.

Department of Housing and Urban Development: Data with respect to Guaranteed Mortgages, Data Concerning Cities and Metropolitan Areas, Interstate Land Sales Registration.

Department of Defense: U.S. Corps of Engineers Projects, Civil Defense Data Concerning Industries, Defense Mapping.

Interstate Commerce Commission: Data Concerning Railroad Lines, Oil Pipelines, etc.

Federal Power Commission: Data with respect to Interstate Electric and Natural Gas Industries, Interstate Gas Pipelines.

Federal Energy Administration: Energy Production and Consumption Data.

Nuclear Regulatory Commission: Nuclear Power Plants; Production, Use, and Disposal of Nuclear Materials.

Environmental Protection Agency: Environmental Data.

Federal Communication Commission: Data concerning Interstate Telephone Lines and Communication Systems.

On January 29, 1976 the Federal Geodetic Control Committee created a Land Data System Subcommittee. This subcommittee will be able to provide federal, state, and local governmental officials with information on, and standards as to land surveying and large scale maps. Of particular concern to this committee will be the creation of computerized maps which will be the foundation of multi-purpose land data systems at the various governmental levels. Computerized maps can be easily and quickly updated. With the use of auxiliary equipment hard copy maps can be drawn from the computerized data

to any selected scale in feet or meters.

Unfortunately the United States, Canada, Mexico, and other North American countries must construct land data systems using data as to latitude and longitude and plane coordinates which will be replaced in about seven years by more accurate data.[1] For this reason any multi-purpose land data system must be designed for ready conversion to the new and more accurate North American Datum Base when it is available.

Any federal multi-purpose land data system must be referenced to the National Geodetic Control Networks with plane coordinates expressed in any compatible system such as the Universal Transverse Mercator System. UTM coordinates are particularly significant in civil defense and are used to designate the boundaries of the leases of the Outer Continental Shelf and of some of the land owned by the United States. Other compatible plane coordinate systems may be more advantageous for local needs.

It is not necessary nor desirable in this paper to set forth in detail the aspects of a multi-purpose federal land data system. Obviously some federal unit should be primarily responsible for the development and implementation of such a system which will consist of major interrelated federal, state, and local subsystems. The increased efficiency of computers and their auxiliary equipment and their reduced costs will permit the federal government to implement a multi-purpose land data system within a relatively short period.

Special Study Recommended

If Congress decides to establish a system for obtaining data concerning the ownership of land in the United States by foreign nationals, a study commission should be created to evaluate existing federal data systems and to determine the most efficient and lowest cost method to obtain and keep current the needed data on foreign ownership of land. This study commission should include representatives of Congress, local, state, and federal governments and professional and trade associations.

The Commission should consider the varied needs of local state and federal governments for specific data to carry out their respective responsibilities. It should consider intergovernmental and interdepartmental relationships and recommend guidelines as to security and maintenance of proper confidentiality of certain data. The Commission should seek to coordinate local, state and federal land data systems, and to promote full utilization of technology and interchange of improved programs.

1/ Statement by Commander John D. Bossler, PROCEEDINGS OF THE NORTH AMERICAN CONFERENCE ON MODERNIZATION OF LAND DATA SYSTEMS -- A MULTI-PURPOSE APPROACH 142 (MOLDS, 1975).

MOLDS with its operative and representative Board of Directors should be able to assist any Study Commission which may be created and, if requested, to help in the creation of the Commission.

Rapid Implementation Possible

It is reasonable to believe that during the next five years there will be a substantial breakthrough in the implementation of compatible modern land data systems at the local and state levels of government.

Substantial implementation might already have occurred if the states had been more advanced in their new role as a major unit of government had been less disorganized, particularly by reorganizations, proposed reorganizations, and personnel changes. The rapid installation of modern land data systems at the local level should greatly facilitate the making of special studies and increase their quality.

Land Title Recording in The United States: A Statistical Summary published in 1974 as State and Local Government Special Studies No. 67 by the Economic Research Service of the Department of Agriculture and the Social and Economic Statistics Administration of the Department of Commerce is a fairly recent study of recording practices in the United States.

The simple fact is that substantial modernization of land data systems has not been undertaken by many local governments.[1]

The term modernization is itself ambiguous. It can denote a change in the way we do something or a change of more substance directed at the purposes of the enterprise itself. For example, a recording system modernization is a change in the way land information is kept. This can involve anything from a better indexing file to a total fiche system cross-indexed by multiple references. On the other hand a system can alter the process and then the purpose of land information. An example of method modernizations is the Suffolk County, New York recording system. Somewhat different in scope is Lane County, Oregon's use of coordinate identifiers to show a relational pattern between all parcels of property. Different still is Forsyth County, North Carolina's system which is designed to consolidate all existing geo-based information systems and non systems and tie them together with a coordinate identifications system based on the State Plane Coordinates.

Many Register of Deed's or Clerk's offices have made strides to improve the efficiency of their recording systems. The Suffolk County, New York example is probably one of the finest modernizations from the pure

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1/ Paragraphs on existing systems in Suffolk, Maricopa, Lane and Forsyth Counties are from a Communication, January 17, 1976, from Eunice Ayers, Chairman of the Committee for Improvement of Land Title Records of the National Association of County Recorders and Clerks.

recordings point of view. That is, the system of recording information is no different. Only the method of keeping, storing, disseminating, and collating the information has changed. Briefly, the system is designed to increase the efficiency and speed of researching property titles by the public, title insurance companies, and attorneys, by having the entire system micrographed on cartridge microfilms. This has enabled the entire set of deeds to occupy one and one-half file cabinets, where the paper system occupied one third of one acre of floor space. The system is constantly updated with the use of automatically fed high speed duplex rotary cameras, and other sophisticated microfilming equipment which is designed to keep the system up to date. Multiple search stations enable attorneys and insurance agents to research files and avoid queing problems for access to specific records. Hard copies can be obtained by simply jotting down the page number of the deed, and requesting a hard copy from the print station. This request takes only a few minutes. The indices to the libers are fiche-created and are multiple referenced by grantee, grantor, mortgagee, and mortgagor, thus providing cross-referencing.

For an entirely different purpose Maricopa County, Arizona has made changes in its assessing system. It is one of only twenty or so assessing systems which utilizes multiple regression analysis to determine full cash value of single family residential properties based on recent property sales and uses such a system on an annual basis. Other uses of computers include a sales affidavit system, a value equalization analysis system, and a secured tax roll system. They also employ a research staff which is constantly evaluating their process from a systems perspective to improve the various systems.

Lane County's (Oregon) use of coordinate values has enabled them to make a rural readdressing change replacing the old rural routing system with a five digit address based on coordinate values. The system allows the entire County to use a common base addressing with the ability to determine distance between any two addresses. Clearly this innovation can alter the very purpose of the land information (e.g., energy services).

Each parcel of land in Forsyth County has been identified by centroid number, using coordinate reference points. This system seeks to consolidate legal and tax information on every parcel of land in Forsyth County. When operational in the late spring of 1976, this system will service the Register of Deeds and Tax Offices. Second phase developments planned at the present time include a tax assessments system similar to that described in the Maricopa County example. Other systems for government and private use are planned such as a public facilities and housing inventory system designed to meet the information needs of public agencies (such as transportation, water and sewer utilities, curb and gutter, housing, community development, building inspections, code enforcement,and public facilities planning). Other uses include law enforcement statistics,

integrated human services information system, and an environmental affairs nomitoring system.

Although perhaps not widespread, some counties are involved in the reassessment of their land information needs and uses and are generating data systems to meet those needs. The technology is now available. In large counties the will is present. In some cases the only lacking ingredient is adequate financing.

Almost a decade ago, in 1968 the Intergovernmental Task Force on Information Systems in its report entitled The Dynamics of Information Flow - Recommendations to Improve the Flow of Information With and Among Federal, State and Local Governments recommended what has been called in this paper a modern, multi-purpose land data system with proper federal, state and local coordination. It would be well to move forward in the rapid implementation of the recommendations of this Intergovernmental Task Force.

In April 1975 the New England Section of the American Congress on Surveying and Mapping in cooperation with the Federation of New England Surveyors' Associations published A More Perfect Union - A Report on Our Knowing the Land, America, a concluding paragraph of which reads in part as follows:

> Most important, we urge the establishment of a "pilot" cadastre from which the task force can derive much of its evaluative material and which can serve as the basis for systematic expansion to a national cadastre. To maximize its effectiveness and representation, the cadastre should encompass a region rather than several counties or a single state. ...

Summary

In summary, whether or not Congress decides to require some form of reporting of foreign ownership of property, including land, in the United States, there is a present need to develop and implement an inter-governmental, multi-purpose land data system. One way to proceed with development and implementation of the system would be for Congress to create a Study Commission of persons knowledgable with respect to modern land data systems. This Commission should work with any federal interdepartmental committee which may be created by the Office of Management and Budget. With the Study Commission, and the interdepartmental committee working together, it should be possible in the near future to meet the land data needs of the users of the system at minimum cost.

ANONYMITY AND DISCLOSURE IN OWNERSHIP RECORDING SYSTEMS

Steven E. Zumbach* and Neil Harl**

Reporting Requirements

Presently, state land title recordation systems reveal very little information about the alien status of persons recorded as title holders or the persons behind such artificial entities as trusts, partnerships, and corporations which hold title to real property.

There are two reasons for this weakness. First, many states do not require the transferee to report alien status at the time of transfer. The second reason is more formidable. Merely requiring the reporting of the name of the person who holds the legal title would not necessarily identify the person who holds the beneficial interest. Legal title and beneficial interest can be held by separate persons. For instance, title to real property that is part of a trust corpus is held by a trustee, but the benefits from the property go to the beneficiary. Similarly, a corporation holds title to real property, but the shareholders receive the benefits from the corporation. Likewise, a partnership may hold title to property, but the partners receive the benefits. Since the legal and beneficial interests can be held by separate persons, any system that attempts to monitor alien status of those holding an interest in real property should also identify the alien status of beneficial owners. In other words, it would be necessary not only to identify the corporation or trust, but also the shareholders, partners, and beneficiaries of the corresponding entities.1/

A possible solution to this problem would be to require artificial entities to report alien status of beneficial owners. However, the reporting requirement can be further complicated if the shareholders, partners, or beneficiaries are also artificial entities. In that situation it would be necessary to identify the beneficial owners of

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1/ For purposes of this paper, artificial entity is used to refer to any entity such as a trust, corporation, or partnership which has the capacity to hold legal title to real property.

those respective entities. This process would have to be continued until beneficial ownership is traced to natural persons, and not stop when beneficial ownership is traced to another artificial entity. Otherwise the intent of the reporting requirement could be easily circumvented.

The separation of legal and beneficial interests in real property poses one additional problem. Even if artificial entities were required to identify beneficial owners at the time of transfer, if there was a subsequent change in the beneficial ownership, the information in the land records would not clearly reflect beneficial ownership.

Limitations on Recording Requirements

Obtaining accurate and complete information on alien ownership of real property would doubtless be costly. For example, even if General Motors had the power to trace its beneficial owners to natural persons and require them to reveal their alien status, the costs would be high. Therefore, an acceptable system would, by necessity, produce something less than complete information.

A solution would be to limit the number of situations in which alien status of the transferee or the transferee's beneficial owners would be required to be reported. By identifying situations where aliens would not be likely to control the use of real property, and by eliminating the reporting requirement in those circumstances, the reporting could be more streamlined and less costly. This section attempts to identify circumstances where the reporting could be lifted and yet provide a system that effectively monitors alien investment in real property.

Prospective Recordation

If the reporting requirement were retrospective in nature, every natural person who held title to real property would have to report alien status, and every artificial entity which held title to real property would have to trace beneficial owners to natural persons and report their alien status. The initial effort would be a monumental task. The burden, however, would be dispersed among the various property owners.

If the purpose is to monitor the magnitude of foreign investment occurring, the most meaningful information would be the incremental shift in alien ownership. Within a very short time, trends in concentration of control could be identified. This appears to be the most feasible system. Retrospective information would seemingly add little to what could be gained from the prospective reporting requirement.

Resident Aliens

In Graham v. Richardson, the U.S. Supreme Court held alienage, with respect to resident aliens, was a suspect classification, and therefore any differentiation between residents of this country based on alienage would have to meet the strict scrutiny test to satisfy the 14th Amendment equal protection requirement.2/

Given the court's position in Graham, it seems clear that any attempt to limit investment of resident aliens would be held unconstitutional. The question then becomes, if you cannot constitutionally limit ownership of real property held by aliens domiciled in this country, is there any reason to monitor their ownership activities?

It is suggested that reporting of alien status be limited to identifying nonresident aliens. No effort should be made to identify or sort out residents who are aliens and own real property. The important policy issue relates to the magnitude of real property owned directly or indirectly by persons who are not U.S. citizens and are not domiciled in this country.

Control of Real Property

One reason for concern about alien ownership of real property seems to be that aliens have the ability to control its use. Thus far, this paper has assumed that beneficial ownership is synonomous with control. That may not be the case. Only when both legal title and beneficial ownership are held by the same person is beneficial ownership synonomous with control. Therefore, whenever a natural person holds title to real property, that individual is considered to control that property. However, whenever legal title and beneficial ownership are separated, it does not hold that beneficial ownership is synonomous with control. For instance, a minority shareholder of a corporation would not be considered to have control of the real property owned by the corporation. Likewise, the beneficiary of an irrevocable trust, where the trustee holds absolute discretion with respect to the investment portfolio, would not be considered to have control over real property that was part of the trust corpus.

Recognizing the concept of control, it seems reasonable to propose that artificial entities be required to report the alien status of only those beneficial owners who control the artificial entity. This limitation on reporting requirements would significantly reduce the burden of tracing beneficial owners to natural persons and reporting alien status.

It is possible to develop various definitions of control with respect to an artificial entity. In the case of a corporation, control may be

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2/ Graham v. Richardson, 403 U.S. 365 (1971).

the capacity to elect a majority of the board of directors. In the case of a trust, it may be the capacity to revoke the trust or control the investment of the trust corpus. Any effort to draft a statute which would limit the reporting requirement to "control persons" 3/ must give careful attention to defining the concept of control with respect to each artificial entity. Unfortunately, it is beyond the scope of this paper to lay out a coherent proposal for a statutory definition of control, although the importance of such a definition is recognized.

By limiting the requirement of reporting the alien status of beneficial owners to only those shareholders who are considered control persons, a loophole would be opened which would be difficult to control. The enterprising alien who wished to remain anonymous could simply set up a group of artificial entities to hold the shares of stock. None of these entities individually would hold enough shares to be considered a control person. Since the alien controls the artificial entity shareholders, he or she would have the indirect capacity to elect a person to the board by controlling the entity shareholders' votes. Similarly, an alien could elect to have various members of his or her family hold title to the shares of stock. If the alien has control over members of his family, he could once again indirectly elect a member to the board without concern that alien status would be revealed. The problem could be solved by setting up rules of attribution which would attribute the ownership of shares, held by artificial entities or natural persons controlled by the shareholder in question, to the shareholder.

In drafting the rules of attribution, some attention should be given to shareholder agreements. In come jurisdictions, shareholders can contractually agree that shares be voted in a certain manner.4/ Note that a number of unrelated aliens could individually purchase shares of a corporation and individually be unable to elect a director to the board. However, with a shareholder agreement, enough voting power could be aggregated to elect a board member. As a solution, any time an alien participates in a shareholder agreement which has the power to elect a member, voting power of the shares affected should be attributed to the alien.

Another potential loophole involves debt instruments which are convertible into equity. By requiring that all convertible debt be included as equity in calculations to determine voting power, the potential for avoiding the reporting requirement can be eliminated.

3/ Generally, a control person has the power to affect the use of real property or income flow. Although the concept is intuitively simple, drafting the concept into a statute which is easily applied and difficult to evade will not be an easy matter. Sections 368(c), 671-678, of the Internal Revenue Code demonstrate the application of the concept of control in the tax law context.

4/ Lattin, Norman D. Lattin on Corporations. New York, Foundation Press, Inc., 1971, p. 379.

In the event that shares are widely distributed and no shareholder has the capacity to elect a board member, the directors of the corporation should be required to report their alien status. This arrangement was provided for in the Canadian Investment Act.5/

Although application of the control exception would significantly reduce reporting requirements, the potential loopholes created by the exception will be quite frankly hard to fill.

Purpose of Artificial Entity

Some entities could be exempted from reporting under a "business purpose" exception. In those situations where aliens use artificial entities as a vehicle to hold title and control the use of real prope the balance sheet and income statement of those entities would be expected to take on distinctive characteristics. Their balance sheets would characteristically show a high percentage of total assets in land and buildings, and income statements with a relatively low percentage in accounts receivable, inventories, equipment, and good will. The income statement would characteristically show a large percentage of total income generated from rents and sales of land-oriented products, such as crops and minerals.

The business purpose exception would exempt entities from reporting requirements if the entities could produce audited income and balance sheets which indicated the entities were not being used to control the use or income from real property.

For instance, if a corporation could demonstrate that at least 75% of its gross income was from the sale of manufactured goods and that 30% of the assets on the balance sheet were not land or buildings, it would not be required to report alien status of its beneficial owners. In addition, if it was a controlling shareholder of another corporation, that corporation would not be required to trace beneficial ownership to natural persons on any shares held by the parent, since the parent was not being used as a device to control real property.

Large corporations could hold substantial amounts of real property and still qualify for the business purpose exception. It would therefore be possible for aliens to control rather substantial amounts of real property by controlling a large corporation, and yet remain anonymous. This possibility makes the business purpose exception somewhat ineffective. As a solution, all entities which otherwise would meet the business purpose exception would have to report if the entity held more than a designated number of acres.6/ If a maximum acre limit is set, attribution rules could be applied to eliminate the possibility of

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5/ "Canada's Foreign Investment Act," 29 Business Lawyer 805 (1974).

6/ See Iowa Code, Ch. 576 (1975): a 640-acre limit is provided for but the section does not set out attribution limitations.

evasion.

Implementing the Reporting Requirements

To this point, it has been assumed that the legal system could be altered to enable natural persons, corporations, trusts, and partnerships to provide the required information. Requiring the individual natural person to report alien status at the time of transfer would cause no serious logistical problem. The more difficult matter is requiring artificial entities to trace beneficial owners to natural persons and to make periodic reports. The following example demonstrates the complexity of the problem. Assume that --

1. X corporation is incorporated under the laws of Delaware.

2. X corporation wants to acquire a tract of real property in Iowa.

3. Iowa requires all artificial entities to trace beneficial ownership to natural persons and to determine the alien status of those natural persons.

4. X corporation has one control person, Y corporation, which is incorporated under the laws of Illinois.

5. X corporation must look for shareholders who are control persons of Y corporation; if those control persons are artificial entities, those entities must be traced to natural persons.

6. An Alabama settlor transferred Y corporation shares to a Florida trustee to be held for the benefit of a French beneficiary.

Unless Iowa empowered X corporation to require Y corporation to reveal its shareholder list, to require the trustee to reveal the terms of the trust and the name of the settlor, and to require the settlor or beneficiary to reveal alien status, the efforts of X corporation to acquire real property could be stymied. The next step is to suggest how the legal system might be changed to aid the artificial entity in its tracing and reporting function.

State Solution

The state could amend its recordation laws to require that: (1) all natural persons must report alien status at the time title is transferred; and (2) all artificial entities which acquire real property after the effective date of the amendment must trace beneficial ownership to natural persons, determine their alien status, and report that status at the time of transfer and on a periodic basis. This requirement would only be applicable to the extent exceptions identified previously would not be applicable.

Without additional grants of power, artificial entities required to trace and report would be relying on the voluntary cooperation of other parties. For the most part, it would be in the best interest of those parties to cooperate. From the earlier example, Y corporation, the trustee, and the settlor of the trust all have an interest in the well-being of X corporation, they would seemingly be interested in aiding X corporation by supplying the requested information. Although a spirit of cooperation may usually prevail, altering the system would give shareholders and indirect beneficial owners veto power over a decision which generally lies with the board of directors. In a partnership, any partner, no matter how small his interest, could veto a land acquisition proposal by refusing to provide information with regard to alien status.

If artificial entities are forced to rely on the voluntary cooperation of its beneficial owners in order to comply with reporting requirements, the system is subject to something less than complete reporting. If a state establishes a reporting system, artificial entities could be granted the right and the power to require the necessary information.

Granting the right to artificial entities to demand the requested information is relatively simple. In the reporting legislation, the legislature would also grant artificial entities the right to require information as necessary to comply with the reporting requirement. With that addition, X corporation would be armed with the right to require Y corporation to turn over its shareholder list, to require the trustee to provide the trust agreement and identify the settlor, and to require the settlor to provide information regarding alien status.

Arming the artificial entity with the necessary rights would not necessarily accomplish the intended purpose. The artificial entity would still need the power to require the necessary information to vindicate the right granted by the legislature. Power is basically a question of jurisdiction. If a party failed to provide the requested information, and the artificial entity had jurisdiction over the party, the entity could file an action in a court, require the recalcitrant party to appear, and seek an injunction requiring the necessary information. However, courts are limited in the powers they have over persons. Generally, a sovereign must have a constitutionally sufficient "contact" with the defendant to subject that defendant to its personal jurisdiction.7/ In other words, the artificial entity seeking to enforce its right cannot walk into any court, require the defendant to appear, and request an injunction.

In the earlier example there was a Delaware corporation doing business in Iowa, an Illinois corporation which held shares in the Delaware corporation, a Florida trustee, an Alabama settlor, and a French beneficiary. Assume that all parties refused to comply with the request of the Delaware corporation for the necessary information. The

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7/ International Shoe v. Washington, 326 U.S. 310 (1945).

Delaware corporation would probably seek redress in either Iowa, the place of business, or Delaware, the place of incorporation. However, there is a serious question as to whether the courts in either state would have power over the defendants in the lawsuit. A court does not have power over a person unless the person has "sufficient minimum contact with the jurisdiction so as not to offend traditional notions of fair play and substantial justice . . ."8/ What constitutes a sufficient minimum contact would have to be decided on a case-by-case basis.

In the attempt to aid an entity in carrying out its reporting requirements, a state can quite easily arm the entity with appropriate rights. However, the state cannot provide the power over necessary parties to insure a convenient forum to enforce the rights. In consequence, artificial entities with widely dispersed beneficial owners may find themselves traveling to a number of inconvenient jurisdictions to vindicate the right to receive information. At this point the system becomes cumbersome and costly. Hopefully, the number of parties involved would be limited and cooperation would prevail.

There is one further complicating factor. An artificial entity may be armed with rights from one jurisdiction to require production of information, but courts in another jurisdiction may not recognize that right when an attempt is made to vindicate the right in the courts of that jurisdiction.

Generally, a state is required to give full faith and credit to the laws and judgments of another jurisdiction.9/ However, a state is not required to subordinate its own laws to the declared policy of another state.10/ That is to say, when an entity seeks to vindicate a right to receive information granted by one jurisdiction in the courts of another jurisdiction, the latter may refuse on the basis that such is contrary to policies of the state. If a jurisdiction refuses to recognize the right granted by another jurisdiction, and there is no other court which can be used to get power over the defendant, the entity would not be able to comply with the reporting requirement.

A court could hold that the required production of information was contrary to state policy on one of two rationales: First, the court might suggest that the relationship between a corporation and its shareholders; partners and the partnership; and the trustee, settlor and beneficiary is private, and that information concerning the relationship should not be made available to third parties. If a state has protected the right of secrecy in certain types of business transactions, it might be reluctant to pierce that right of anonymity to

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8/ Id. at 7.

9/ United States Constitution, Article IV, Section 1; 28 U.S.C. § 1978 (1970); 28 U.S.C. § 1963 (1970).

10/ International Hotels Corp. (P.R.) v. Golden, 203 N.E. 2d 210 (1964).

further the policies of another state.

A second approach could be to argue that no state has the jurisdiction to regulate the internal affairs of a corporation, trust or partnership of another jurisdiction. The internal affairs of an entity are governed by the laws of the jurisdiction under which it is formed or qualified to do business. Therefore, the role of anonymity may be regarded as a matter internal to laws of the state of formation. Consequently, any attempt by a foreign jurisdiction to alter the rule of anonymity with respect to domestic trusts, partnerships, and corporations would be considered a failure on the part of the foreign jurisdiction to give full faith and credit to the laws of the jurisdiction in question.11/

Although there is no case on point, it is quite conceivable that either argument could be made and supported on appeal. We are left with a situation where a state can require information of an entity, grant the right to receive that information, but cannot grant power over all necessary parties to insure receipt of the information. A state can only equip the entity with the necessary rights, and trust that foreign jurisdictions will recognize those rights.

When a foreign jurisdiction refuses to recognize the rights granted the entity, the state which granted the right is left with several alternatives. First, the state might stand firm, and refuse to allow the entity to record title without the requested information. States might be reluctant to take such a rigid position because of the potential negative impact on commerce within the state. In addition, there would be the problem of the entity which complied with reporting requirements at the time of initial transfer, but was unable to comply with the periodic reports because beneficial owners might change their residence and the new jurisdiction might refuse to recognize the rights granted the entity to require information.

A second position might be to grant the entity an exception to the reporting requirement after it had exhausted all potential remedies to obtain the information. The obvious consequence is that those jurisdictions promoting anonymity as part of its state law policy would become the situs for all ventures wishing to use artificial entities to acquire control of real property and protect the anonymity of the beneficial owners.

Traditionally, the states have had a great deal of autonomy in governing real property law and the internal operations of domestic corporations, trusts, and partnerships. The proposed state solution

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11/Western Airlines v. Stephenson, Cal. Sup. Ct. (1958). Reese, Willis L., and Kaufman, Edmund M., "The Law Governing Corporate Affairs: Choice of Law and the Impact of Full Faith and Credit," 58 Columbia Law Review 1118, 1130.

recognizes the states' dominant position in those particular areas and preserves the states' autonomy of governing those concerns. However, that very state autonomy may ultimately lead to the major shortcoming of the state solution. While a state may be the czar with respect to persons and entities within its own boundaries, its power is quite limited over persons and parties in other jurisdictions. Consequently, a state which wishes to enforce reporting requirements would have to rely on the willingness of courts in sister states to enforce rights granted by its reporting statutes. Recognizing the potential for divergent viewpoints in this area, sister states may refuse to enforce the rights.

Federal Solution

Rationale for the Federal System

A federally administered program to monitor the magnitude of alien investment in real property has two principal advantages over a state solution: (1) it would provide uniform data from all 50 states, and (2) no state could withhold information by saying it was against its policy.

Information regarding the magnitude of alien investment in real property would undoubtedly be more useful if reported from all 50 states and if the information were uniformly reported. If the matter is left to individual states, it is unlikely that 50 states would simultaneously set up reporting systems. Even if most states did monitor alien investment, there would probably be a lack of uniformity in the reporting requirements. It would be difficult to aggregate data accumulated under different reporting systems. If a need is established for uniform data on a national scale, a federally administered system would be necessary.

As noted previously, a state does not have to give full faith and credit to laws or judgments from sister states if they are contrary to its own state policy. If there is a constitutional power for the Congress to implement the reporting legislation, a jurisdiction could not refuse to enforce the rights granted by the legislation on the basis that it is contrary to state policy. Article VI, Section 2, the "Supremacy Clause" of the U.S. Constitution provides "this constitution and the laws of the United States which are made in pursuance thereof . . . shall be the supreme law of the land."13/ Consequently, when Congress acts under a constitutional power, contrary state positions are precluded.

The Commerce clause of the Constitution provides a basis of power that could be relied on in passing federal reporting requirements for alien investment in real property. That clause grants power to Congress to "regulate commerce with foreign nations, and among the several states."

12/United States Constitution, Article VI § 2.

Decisions by the U.S. Supreme Court indicate that the activity to be regulated must have an "appreciable affect (direct or indirect) on interstate commerce."14/ Under this somewhat expansive view, it should be possible to find supporting evidence that alien ownership of real property may have an appreciable impact on interstate commerce. Given the expansive reading that has been given to the commerce clause, it is probable that the requisite "affect" could be found to justify federal reporting legislation.

Without experience by any one state in enforcing a reporting requirement similar to the one suggested by this paper, it is difficult to determine how important the second advantage of federal reporting might be. If other jurisdictions were cooperative and recognized the right of the entity to require information, or a state was willing to take a hard line and refuse to record title of all these entities who failed to comply with the reporting requirement, the second advantage of the federal solutions would not be great. The strongest argument for a federal solution is the need for uniform data from all 50 states relating to the magnitude of alien investment in real property.

Reporting Requirements for Natural Persons

At the time of transfer of title, the transferees should be required to identify alien status. Under a state system, the information would have been reported to the government official responsible for recording title to real property. Presently, no federal government agency has a record of the location of owners of real property. Although the federal government could set up a system for this purpose, it would seem more reasonable to take advantage of already existing state systems. The federal legislation would simply require all states to alter land recordation laws to require the identification of alien status at the time of transfer of title to natural persons. At the close of each year, the state would be required to transfer the information to the appropriate federal official.

Reporting Requirements for Artificial Entities

For reasons suggested in previous sections, it would be best to use the state systems to carry out the mechanical reporting requirements. Under the federal legislation, states would alter recordation laws to require artificial entities to trace beneficial ownership to natural persons and report alien status at the time of transfer of title, with periodic reports following. In carrying out the reporting requirements, the artificial entity would be armed with a federal right instead of a state right.

13/Hammer v. Dagenhart, 247 U.S. 238 (1918); National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937); Heart of Atlanta Hotel v. United States, 379 U.S. 241 (1964).

While the federal right would be recognized in all fifty states, it would not have to be recognized in foreign countries. An artificial entity may be unable to trace beneficial ownership to natural persons if, in the tracing process, information must be acquired from an entity or person domiciled in a foreign country. If the purpose is only to monitor the magnitude of alien ownership, the problem of uncooperative foreign governments should not be significant. Once an entity has traced beneficial ownership to an entity domiciled in a foreign country, alien status should be assumed.

A more difficult problem is caused by bearer stock. A person who holds bearer stock can hold all the rights associated with ownership simply by having possession of the stock certificate. Endorsement is not required to transfer the stock, nor do any assignments have to be recorded in the corporate books. As a result, a corporation does not know who the shareholders are at any given moment. Even if the corporation wanted to comply with a request to identify control persons of the corporation, it would be impossible.

Three solutions are suggested for dealing with the problem posed by bearer stock. A hard-line position would require those entities which are only able to trace beneficial ownership to a corporation with outstanding bearer stock to sell the interest held in real property. Alternatively, an entity which traced beneficial ownership to a corporation which had outstanding bearer stock, could be permitted to discontinue the tracing requirement at that point. Jurisdictions which allowed bearer stock would than become havens for individuals who wished to use corporations to hide the beneficial ownership.

As a third alternative, the federal government could preclude the distribution of bearer stock. Note that this option would not be available under the state solution. If bearer stock was permitted by many states, and posed a serious threat to the effectiveness of a state reporting plan, a federal solution would be necessary.

Avoidance of Reporting Requirements

Lease

A reporting system set up to record only the alien status of real property with respect to fee simple ownership interests would provide no information with respect to other forms of property interest. Rather than acquiring an ownership interest in a fee simple, one might acquire a long-term lease, and thereby avoid the reporting requirements.15/ Control of a long-term lease can have almost the same economic consequences as ownership of a fee simple interest. Recognizing the potential for abuse, the reporting requirements

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14/Miller, Robert L., "Investing in Real Property in Mexico," 1969 Los Angeles Bar Bulletin 561.

should also be made applicable to leases that are longer than 30 years, or any other appropriate time period.

One way of manipulating the 30-year limitation would be to acquire a 100-year lease but, every 29 years, transfer the lease to a new person or entity controlled by the original lessee. The solution would be to apply the suggested attribution rules and require compliance with the reporting requirements, when it is established that a person or entity, through attribution of lessee status, controls a piece of real property through a lease for a period exceeding 30 years.

Contracts of Sale

A person acquiring real property on a contract sale may have control and possession but may not be recorded in the land records. The transferor keeps title to the real property until the contract has been fully satisfied. If the contract calls for payments over a period of 40 years, an alien interest in that property could go undetected for a like period. To avoid this problem, a state should require recordation of contracts of sale, and require reporting of the alien status of the transferee.

Debt With Equity Characteristics

The suggested recording systems would only generate information relative to corporate entity status with respect to those individuals who hold voting rights in the corporation. A corporation may issue instruments that have both debt and equity characteristics. For example, a corporation might issue a security which paid a dividend based on percentage of profits rather than a fixed interest rate, but did not provide voting rights. To produce a complete portrayal of nonresident alien investment activity in real estate, a reporting system would have to be designed to also extract information regarding the alien status of individuals holding debt securities that also exhibited equity characteristics.

Between the two extremes of nonvoting nonparticipating preferred and convertible debt securities, many instruments constitute a gray area where it is difficult to determine whether the potential for control is present. Rather than attempt to be overly definitive as to what constitutes control, it might be better to make a determination on a case-by-base basis. With aggressive enforcement and penalties for failure to comply, individuals would be deterred from attempting to avoid the reporting requirements by using instruments encompassing traditional equity characteristics but denominated otherwise.

Unrecorded Deed

An alien who wished to remain anonymous could intentionally fail to record the deed in the public land records. Since the suggested monitoring system requires revelation of alien status at the time of

recordation, the purchaser could avoid revealing alien status by not recording the deed. The alien investor would then forfeit the protection of the recordation laws. Holders of unrecorded deeds may force confrontations with subsequent grantees or creditors of the grantor as to priority of status. That alone should significantly reduce the attractiveness of failing to record the deed. If the risk of holding an unrecorded deed is not a sufficient deterrent, recordation could be made mandatory and penalities imposed for failure to record.

Summary

This paper suggests methods for monitoring the magnitude of alien investment in real property. Every state has a system for recording title to real property, but little is known about the alien status of persons who are recorded as title holders or persons behind such artificial entities as trusts, partnerships, and corporations. Any system designed to accurately monitor alien investment must produce the following information: (1) the alien status of the owner, including beneficial ownership, when recorded and (2) periodic changes of beneficial ownership in artificial entities.

Obviously, any system which produces the required information would be costly and cumbersome. What must be done is to identify those transactions or business relationships which aliens would commonly employ to control the use of real property. The recordation requirements could then be limited to those situations. To achieve this purpose, it is suggested that (1) recordation of alien status be limited to prospective transfers of real property, (2) resident aliens should not be required to report alien status, (3) only "control persons" of artificial entities would be required to report alien status, and (4) if the business purpose of an artificial entity is clearly not to control the use of the real property, there would be no reporting requirement.

Enabling legislation to set up the administrative machinery for collecting the required information could come at the state or federal level. First, it would be advisable to determine how state land recordation laws might be adjusted to provide the required information. However, because of jurisdiction and conflict-of-law problems, the effectiveness of a state-by-state solution may be limited. Also, if uniform data on a national level were necessary, relying on a state-by-state effort would be operationally ineffective. Alternatively, the pervasive legislative powers granted Congress under the commerce clause of the Constitution might be utilized to implement a federal system. Limitations of the state system could be overcome by federal action. However, this would undermine the traditional role of state sovereignty in governing matters affecting real property.

Once implemented, aliens wishing to hold title to real estate and yet remain anonymous might attempt to circumvent reporting requirements. Devices such as contracts of sale, long-term leases, and use of debt

capital with equity characteristics might be used. Reporting systems should be adjusted to limit the effectiveness of those methods of remaining anonymous.

Even if the suggested exceptions to the reporting requirement were included, the costs and burdens of compliance would not be insignificant. It is therefore suggested that the need and type of information be clearly identified and defined before data collection mechanisms are imposed.16/

15/Presently, the National Conference of Commissioners on Uniform State Laws is considering the Uniform Simplification of Transaction Act. It might be suggested that any proposed change in state land title recordation laws be included in the proposed Uniform Land Transaction Act.

Appendix

Restricting nonresident alien ownership of real property is not a recent phenomenon. Many states already have adopted statutes limiting nonresident alien ownership of real property. It is interesting to note that few states have developed corresponding reporting systems which would enable effective enforcement of the restrictions. The "Reporting Requirements" section of this paper carefully sets out the elements of a reporting system that would be necessary for either monitoring or enforcing limitations on alien investment in real property. Table 1 summarizes how many of those elements have been incorporated into reporting systems in those states which restrict nonresident alien ownership in real property. From the information presented in Table 1, it should be apparent that current state restrictions may be easily avoided.

Table 1. State Law Restrictions on Alien Ownership of Real Property and Summary of Reporting Mechanisms

State	Natural Persons Must Report Alien Status	Limitations are Placed on Entities Formed in Foreign Countries	Entities are Required to Report Alien Status of Beneficial Owners	Entities Must Trace Beneficial Owners to Natural Persons	Periodic Reporting by Entities on Alien Status of Beneficial Owners	Attribution Rules are Applicable	Limit Long Term Leases	Limit Sales on the Contract	Test of Alien Status		
									Domicile	Residence	Citizenship
Alabama											
Alaska[1/]	X										X
Arizona[2/]		X									X
Arkansas											
California[3/]											X
Colorado											
Connecticut[4/]											X
Delaware											
Florida											
Georgia											
Hawaii[5/]	X							X			X
Idaho[6/]											X
Illinois[7/]								X		X	X
Indiana[8/]										X	X

Table 1. Continued

State	Natural Persons Must Report Alien Status	Limitations are Placed on Entities Formed in Foreign Countries	Entities are Required to Report Alien Status of Beneficial Owners	Entities Must Trace Beneficial Owners to Natural Persons	Periodic Reporting by Entities on Alien Status of Beneficial Owners	Attribution Rules are Applicable	Limit Long Term Leases	Limit Sales on the Contract	Test of Alien Status		
									Domicile	Residence	Citizenship
Iowa[9/]	X	X	X		X		X			X	X
Kansas[10/]											X
Kentucky[11/]	X										X
Louisiana											
Maine											
Maryland[12/]											X
Massachusetts[13/]									X		
Michigan											
Minnesota[14/]	X	X									X
Mississippi[15/]											
Missouri										X	
Montana[16/]											X
Nebraska[17/]		X					X				
Nevada											X

Table 1. Continued

State	Natural Persons Must Report Alien Status	Limitations are Placed on Entities Formed in Foreign Countries	Entities are Required to Report Alien Status of Beneficial Owners	Entities Must Trace Beneficial Owners to Natural Persons	Periodic Reporting by Entities on Alien Status of Beneficial Owners	Attribution Rules are Applicable	Limit Long Term Leases	Limit Sales on the Contract	Test of Alien Status: Domicile	Test of Alien Status: Residence	Test of Alien Status: Citizenship
New Hampshire[18/]										X	
New Jersey[19/]											X
New Mexico											
New York[20/]		X									X
North Carolina[21/]										X	
North Dakota											
Ohio											
Oklahoma[22/]	X										X
Oregon[23/]	X										X
Pennsylvania[24/]		X									X
Rhode Island											
South Carolina[25/]		X									X
South Dakota[26/]		X									X
Tennessee											

Table 1. Continued

State	Natural Persons Must Report Alien Status	Limitations are Placed on Entities Formed in Foreign Countries	Entities are Required to Report Alien Status of Beneficial Owners	Entities Must Trace Beneficial Owners to Natural Persons	Periodic Reporting by Entities on Alien Status of Beneficial Owners	Attribution Rules are Applicable	Limit Long Term Leases	Limit Sales on the Contract	Test of Alien Status		
									Domicile	Residence	Citizenship
Texas											
Utah											
Virginia[27/]											X
Vermont											
Washington											
West Virginia											
Wisconsin[28/]		X									X
Wyoming[29/]		X									X

1/ Alaska Stats., Sec. 38.05.190 (1961).
2/ Ariz. Rev. Stats. Ann., Sec. 33-1201 through Sec. 33-1207 (1939).
3/ Cal. Probate Code, Sec. 259 (1947).
4/ Conn. Gen. Stats. Rev., Sec. 47-57, 47-58, (1949), Conn. Gen. Stats. Rev., Sec. 45-278 (1947).
5/ Hawaii Rev. Stats., Sec. 206-9 (1965), Sec. 516-33 (1967).
6/ Idaho Code, Sec. 58-313 (1974).

7/ Ill. Rev. Stats., C. 6, Secs. 1 and 2 (1897).
8/ Ind. Code, Secs. 32-1-2-1 (1953) and 32-1-8-2 (1905).
9/ Iowa Code, Sec. 567; Iowa H.F. 215 (1975).
10/Kans. Stats. Ann., Sec. 59-211 (1939).
11/Ky. Rev. Stats. Ann. 381.290, 381.300; Ky. Rev. Stats. Ann. 381.320, and 310.
12/Ma. Ann. Code, Art. 21, Sec. 14-101 (1972).
13/Mass. Ann. Laws, C. 206, Sec. 27B (1956).
14/Minn. Stat., Sec. 500.22 and 500.24 (1945).
15/Miss. Code Ann., 89-1-23 (1940).
16/Mont. Rev. Code Ann., Sec. 91-520 (1953).
17/Neb. Rev. Stats., Secs. 76-402-414 (1939).
18/N.H. Rev. Stats. Ann., Sec. 477.20.
19/N.J. Stats. Ann., Sec. 46.3-18 (1924).
20/N.Y. Surr. Court. Prov. Act, Sec. 2218; N.Y. Gen. Corp. Law, Sec. 221 (1935).
21/N.C. Gen. Stats., Sec. 64-1 and 64-3 (1959).
22/Oklahoma Stats., Sec. 60-121 through 60-123 (1931).
23/Oregon Rev. Stats., Sec. 273.255 (1974); 517.010 (1971), 517.044 (1961).
24/Pa. Stats. 68, Secs. 21 through 32 (1956).
25/S.C.C.A., Sec. 57-103 (1956).
26/Acts of S.D., 1974, C. 294.
27/Va. Code Ann., Sec. 55-1 (1919).
28/Wis. Stats., Sec. 710.
29/Wyoming Stats. Ann., Sec. 34-151 (1943).

THE IOWA REPORTING LAW AND ALIEN OWNERSHIP

Neil E. Harl*

Introduction

Since the late nineteenth century, Iowa has imposed limitations on the amount of land that a nonresident alien may acquire in the state.1/ The statutory constraint has applied not only to nonresident aliens but also to corporations organized under the laws of a foreign country, or incorporated in the United States if half or more of the stock is owned or controlled by nonresident aliens.2/ Such corporations or alien individuals are not constrained from acquiring real property within cities or towns and may acquire up to 640 acres outside the cities and towns.3/ The permissable maximum acreage that could be acquired by each nonresident alien individual or corporation was increased from 320 to 640 acres in 1965.4/

The Iowa statute does not purport, however, to monitor the level of nonresident alien investment in the state.

In 1975, in conjunction with a response to expressed concerns about corporate involvement in Iowa agriculture, the Iowa General Assembly enacted legislation requiring annual reporting by corporations, limited partnerships, and nonresident aliens.5/ The act also placed a 1-year moratorium on acquisition of "additional agricultural land" by corporations 6/ other than "family farm corporations" 7/ and "authorized farm

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1/ Iowa Code, Ch. 567 (1975). Resident aliens have the same property owning rights as citizens. Iowa Constitution, Art. I, § 22. See generally, Note, "Property Rights of Aliens Under Iowa and Federal Law," 47 Iowa L. Rev. 105 (1975).

2/ Iowa Code § 567.1 (1975).

3/ Ibid.

4/ Ch. 416, Acts of 61st Iowa General Assembly (1965).

5/ H.F. 215, Ch. 133, Acts of 66th Iowa General Assembly (1975) (hereinafter cited as H.F. 215).

6/ H.F. 215, § 4.

7/ See H.F. 215, § 1(8).

corporations."8/ Finally, the legislation by its terms purports to prohibit any processor of beef or pork with wholesale sales of $10,000,000 or more from owning, controlling, or operating a feedlot in the state.9/

Reporting Requirements

The 1975 legislation requires that nonresident alien individuals, "owning or leasing agricultural land, or engaged in farming outside the corporate limits of any city" in the state, file an annual report with the Iowa Secretary of State.10/ The report must include the nonresident alien's name, address, residence, and citizenship; a declaration of the type of agricultural activity engaged in by the nonresident alien; the acreage and location of agricultural land owned outside the corporate limits of any city in the state as of the end of the preceding calendar or fiscal year, listed by township and county; the approximate number and kind of livestock or poultry owned, contracted for, fed, or kept and the approximate number of acres used for each agricultural crop, fruit, or other horticultural product grown or contracted for during the preceding calendar or fiscal year; the number of acres owned and operated; the number of acres leased to and the acreage leased by the nonresident alien; the crop or livestock shares to which the nonresident alien is entitled under any lease; and whether the nonresident alien is represented in the state by an agent or other representative.11/

The legislation not only requires reports by nonresident alien individuals directly involved in owning or leasing agricultural land or farming operations. It also requires that similar reports be filed by those acting in a fiduciary capacity (such as a trustee) for a nonresident alien individual if the fiduciary "holds agricultural land . . . outside the corporate limits of any city" in the state.12/ And reports are required of nonresident aliens who are beneficiaries under a fiduciary relationship in which agricultural land is held.13/

Identification of Those Obligated to Report

Prior to the 1975 legislation, there had been no registration at either state or county levels of nonresident aliens owning agricultural land or engaging in agricultural activity, or of fiduciaries involved in such operations on behalf of nonresident aliens. The Iowa legislature therefore imposed a requirement on the county assessors that they provide such information to the Iowa Secretary of State on an annual

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8/ See H.F. 215, § 1(9).
9/ H.F. 215, § 2.
10/H.F. 215, § 7.
11/Ibid.
12/H.F. 215, § 8(3).
13/H.F. 215, § 9(3).

basis.14/ Assessors as a group were assumed to be the most knowledgeable individuals in the state regarding ownership of agricultural land. The act requires that they provide the Secretary of State, by October 1 of each year, the name and address of every nonresident alien, as well as the name and address of every corporation, trust, or other business entity "owning agricultural land in the county as shown by the assessment rolls of the county."15/ Upon receipt of the lists, the Secretary of State will send to each individual and firm so identified the forms for the required report.

By the terms of the 1975 legislation, willful failure to file a required report or the willful filing of false information is a public offense punishable by a fine not to exceed $1,000.16/

Obviously, the success of the Iowa statute in adducing reliable information on the nature and extent of land ownership and agricultural activity by nonresident aliens depends upon the extent to which nonresident aliens are identified, are apprised of the reporting requirement, and respond with the required reports.

Findings

The reports by nonresident aliens will be filed with the Secretary of State on or before March 31 of each year.17/ Data from the reports will be made available to the Iowa General Assembly.18/ It is anticipated that the data from the first year's reports will not be available until late 1976.

14/H.F. 215, § 13.
15/Ibid.
16/H.F. 215, § 12.
17/H.F. 215, § 7.
18/H.F. 215, § 15.

FOREIGN INVESTMENT IN U.S. REAL ESTATE: SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Gene Wunderlich*

Who Should Own the Land?

The American's possessiveness of territory against outsiders has a long history. "[A]s early as 1635 Watertown passed its order that no 'forreiner' coming into town should benefit by the commonage..." 1/ Prior to 1659, Connecticut forbade sales to outsiders unless the town gave permission. 2/ Even dower rights to land were denied a widow who had not joined her husband in American citizenship at the time of the Revolution. 3/ The existence today of 29 state laws 4/ of varying severity and effectiveness which limit land holding by aliens is evidence of the latent opposition to ownership of land by outsiders.

Despite such delitescent discrimination against outsiders, land holding in the United States has a history of liberal settlement and sales. 5/

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*/ Economic Research Service, U.S. Department of Agriculture.

1/ S. Livermore, Early American Land Companies, 25 (1968).

2/ Ibid 27.

3/ Discussed with other aspects of the history of citizenship in J. Kettner, The Development of American Citizenship in the Revolutionary Era: The Idea of Volitional Allegiance, 18 Am Jour of Legal History 230 (Jul. 74).

4/ For discussion of state law affecting alien owners see U.S. Dept. of Commerce, Foreign Direct Investment in the United States, Vol, 8, Appendix M, F. Morrison, Legal Regulation of Alien Land Ownership in the United States (May 1976); F. Morrison and K. Krause, State and Federal Legal Regulation of Alien and Corporate Land Ownership and Farm Operation, AER 284 (May 1975); Council on International Economic Policy, Summary of state legislation affecting alien investment in land and related resources (prepared by Washington and Lee Law School, unpub. 1974); and Economic Research Service, Memorandum on state legislation affecting alien investment, summarizing material from Martindale-Hubbell, Nov. 16, 1973.

5/ P. Gates, History of Public Land Law Development (1968) A. Chandler, Land Title Origins: A Tale of Force and Fraud (1945).

Questions about the legitimacy of past European claims to North America [1] have never been a serious bar to the free marketing of America's land. Nor has concern for future patterns of land use or land ownership in the United States been of much public concern until recently. Therefore, this inquiry into the basis for differential treatment of citizens and aliens in land holding was made in the context of a tradition of relatively unrestricted possession and transfer of land. Subsurface sentiments against outsiders have generally been suppressed in favor of perceived economic advantages of an unrestricted market for land. [2]

Although the impetus of this inquiry was an examinationof foreign investment practices and policies, land in these chapters has been accorded a broader base of analysis. The foreign ownership of land in the United States is part of a larger question: Who should own the land? Correlatively, what benefits and responsibilities should ownership entail? Is citizenship a basis for special benefits and special responsibilities? From as many angles and distances, the 20 plus architects of the foregoing chapters sought answers to these questions. Although their approaches varied, the authors touched, in one way or another, three critical features of the foreign investment issues: land, citizens, and information. Let us first examine the meaning of these features as they bear on foreign investment policy, summarize the authored chapters, and then arrive at some conclusions.

Land, Citizens, Information

Land

Land has physical, economic, and institutional qualities sufficiently unique to require separate attention in direct investment policy. We

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1/ See for example, M. Price, Law and the American Indian (1973 [Readings and Cases] "...the Anglo-Saxon committment to private property obviously yielded in important ways to the rapacity of the European settlers and the frontier expansionists...." Origin and legal reasoning pertaining to European claims may be found in Chief Justice Marshall's opinion in Johnson v. McIntosh, 21 U.S. 98 Wheat. 543 (1823).

2/ Land schemes appeared before the Revolution, and the annals of real estate speculators contain the names of many of the nation's founding fathers. Land promoters such as Robert Morris, Patrick Henry, and Sam Blodgett, first supervisor of the city of Washington, D.C., flourished in the early days of the Republic, and appear in America's land legends. George Washington wrote to his friend William Crawford, "Any person who neglects the present opportunity of hunting out good lands...will never regain it....my plan is to secure a good deal of land." A Chandler supra 71. Harris describes real estate machinations of an earlier time "...Andrew Craig was a dummy owner who immediately reassigned his part of the Burlington Company venture to Cooper. Also Washington's share in the Dismal Swamp venture was sold to a dummy owner in Alexandria. He immediately reconveyed it to Bushrod Washington, one of the executors." M. Harris, Origin of the Land Tenure System in the United States, 291 (1953).

need only say about the physical quality of land that it is scarce in relation to the total potential uses. Each unit of land has but one location; it absorbs, stores, or emits energy; it defines activity; and it limits the existence of man absolutely. Without space there would be no circumstance.

Land in this report, however, is defined as a resource; its more relevant qualities are economic and institutional.

The economic value of land 1/ follows directly from physical scarcity; there are simply more wants from the land than can be supplied without cost (even if the cost is only that of deciding). If land cannot supply man his wants, then man must apply labor (work) or capital (save). From the product created by a combination of labor, capital, and land are paid wages, interest, and a remainder--rent. This elementary restater of distribution principles is intended to distinguish land, the resource, from real estate, the paper claim to land often merged with capital.

The institutional features of land follow from the physical and economic qualities. However, the rules about land access, use, and benefit, i.e. the institution of property, are determined also by the level of sophistication of society--its capability to manage symbols.

In simple societies it is possible for an economy to function through single, unique transactions for goods or services. Complexity and size require rules for categories of things and processes. Thus, livery of seisin gave way to modern conveyancing--the volume of land trading was too much for a simple direct system.

But each degree of sophistication requires standardization and classifying--so the progress of society calls for homogenization--the physical (and to a great extent economic) qualities of land are lost to the exigencies of a classifying and refining market. The land market, still primitive by the standards of the household goods market, is moving rapidly to the point of pure manipulation of symbols.

The greater the volume of real estate transactions, the greater the need for mass marketing techniques, grades, standards, forms, regulations, and controls. "Paper" is replacing territory. One consequence is that policies are designed in terms of paper and symbols which do not fully take into account the territory and uses they represent. The nature of land as a resource in economic processes may be forgotten. Policies to affect the real estate trade may not be effective policies for land. Policies to affect international investments may not be effective policies for real estate.

1/ The market approach to real estate shows a 1975 asset value of $3,361.5 billion for all U.S. real estate. Another approach, more closely related to national wealth, would put the value at $4,361.5 billion. Land represents about 1/3 of the value of real estate. See Appendix I.

Citizens

The request by Congress for the study of alien investment implies that citizenship is a crucial ingredient in the national policy of investment. Especially must this be true about land, for citizenship is defined, in part, by land. McDougal, Lasswell, and Chen refer to "membership in a territorial community, " 1/ and Bickel adopts Holmes definition of citizenship as "a territorial club." 2/ The concept of exclusion at the heart of property is also the essence of citizenship.

Citizenship connotes an interest in the common property of a nation. 3/ The cliche of owning stock in a nation is not without substance. But is owning stock in a nation to be one of the exclusive privileges of being a citizen? The question underlies investment policy. Obviously the answer must extend beyond the simple economics of resource control and international finance.

Why does a citizen of one country invest in the territory of another? Are there motivations beyond the monetary return and security of asset? Citizenship is an investment of allegiance. 4/ Citizenship provides "protection against other territorial communities and of securing richer participation in the value processes of his chosen community..." 5/ Does investment provide some of the amenities (and burdens) of citizenship? Is equity equivalent to patriotism?

The attractive aspect of citizenship to an individual is gaining some advantage, or avoiding some disadvantage--that is, acquiring some benefit as a member of a nation. 6/ Presumably, then, a policy of investment in the land of a nation can be viewed in terms of the benfits of citizens vis a vis others. Even the 18th century liberal arguments for free trade were not based on a one-world philosophy but on the idea that free trade was good for the nation and its citizens.

1/ M. McDougal, H. Lasswell, and L. Chen, Nationality and Human Rights: The Protection of the Individual in External Arenas, 83 Yale L. J. 901 (Apr.-Jul. 74).

2/ A. Bickel, Citizenship in the American Constitution, 15 Arizona L. R. 369-387 (1973).

3/ Mason Gaffney points out, however, that some citizens have a greater interest in the common property than others, and, in the extreme, some of the common property is not altogether common. Gaffney also describes the process by which beneficial citizenship is conferred on foreign nationals (casiques) through military spending. Mason Gaffney, Benefits of Military Spending. Proceedings of 10th annual conference, Committee on Taxation Resource and Economic Development, Madison, Wisconsin, Oct. 25, 1971.

4/ Bickel supra at 383.

5/ McDougal supra.

6/ Individual advantage is consistent with the notion of citizenship and benefit. The benefits to members of the multinational corporation are extraterritorial to a particular country. Nevertheless, national policies do influence the multinationals, hence its members; so the ultimate effect of a policy may be determined by the direction of allegiance of the "dual citizens" of a country and a multinational.

Citizenship jus soli grows directly out of the land, and even citizenship jus sanguinis merely employs a blood step to territory. Citizenship may be termed land's investment in, and claim on, people. "Patriotism is the demand of the territorial club for priority..." 1/

A policy on international investment in land must at least imply some vision of the benefits and burdens of citizenship. This inquiry on international real estate investments recognizes that nations can and do discriminate on the basis of citizenship.

All of the chapters of this volume, one way or another, touched the issue of benefits and burdens of membership in the territorial club. We have not treated the topic of citizens, subjects, and nations exhaustively. Perhaps this inquiry into alien land ownership, however, may be a useful entry into other inquires about the nature of man and state.

Information

The Foreign Investment Study Act of 1974 is itself a testimony to the significance of information. Congress passed the Act because it felt that information on foreign investment was inadequate. This report on investment in real estate provides an entry into some basic policy issues of the rights of citizens and governments to know, the nature of property and privacy, and the privileges and responsibilities of foreigners to supply information to members of the "territorial club."

Most recently the policy issue relating to information has been framed in terms of personal privacy 2/ and federal 3/ and other institutional 4/ records related to specific persons. However, the information issue goes beyond personal privacy and into commerce, industry, finance, and intergovernment relations. What are government's duties to obtain information in support of commerce, national security, and economic prosperity? What are government's duties to inform its citizens? What is a public record?

Aside from regulation or restriction of foreign holding of real estate, the major policy issue related directly to information: Who should report what to whom about real estate transactions, holdings, and interests? What information about real estate transactions, intentions of transactions, financing, ownership, and lesser interests should be

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1/ Bickel supra.

2/ See for example the issue of standard universal identifier extensively treated in U.S. Dept. of Health, Education and Welfare, Records Computers and the Rights of Citizens, July 1973.

3/ Ibid and the Privacy Act of 1974, P.L. 93-579, 93rd Cong., Dec. 31, 1974.

4/ See for example: Note, Government Access to Bank Records 83 Yale Law Jour. 1439 (74); R. Block, Of Records and Reports: Bank Secrecy Under the Fourth Amendment, 15 Ariz. L. R. 39 (73); and J. Rule, Private Lives and Public Surveillance (1974).

made available to other parties, to government, or to the public at large? Some of the policies relating to information may pertain to any investment, portfolio or direct; other policies may distinguish the economic and institutional qualities of land. Our principal concern is information about property in land.

The concept of information is a root of property. 1/ The entitlement to a property object such as land is a proclamation of interest to and against the world. To the extent the claim is honored and enforced, the world acknowledges the proclamation.

Muniments of title or registration certificates are written forms of communication essentially between the rights holder and all other persons. They are public documents, they must be public to serve their purpose. Even unwritten evidences of entitlement, such as "open and notorious possession" or preliterate public exchanges of wealth, are communications to the world--publicity.

Public though they may be in a legal sense, the public land records are not in fact a generally accessible display of land, interests, and interest holders. 2/ The character of public records of landholding has been shaped by requirements of parcel conveyancing. 3/ Public records are suited to assurance of individual interests on a transaction-by-transaction basis. They are generally not suitable for a cross-section display of ownership status, say, of a whole jurisdiction.

Ownership status is further obscured by trusts, nominees, and other devices which veil the beneficial owners of property.

The economic function of information is to reduce uncertainty in the processes of resource allocation or exchange. 4/

By reducing uncertainty in the assignment of benefits and costs to people, information also plays a role in the distributive process. 5/

1/ This view of property is examined in G. Wunderlich, Property Rights and Information, 412 The Annals 80 (Mar. 1974).

2/ B. Burke, Governmental Intervention in the Conveyancing Process, 22 Am Law Rev 240 (Winter 1973).

3/ F. Leary Jr. and D. Blake, Twentieth Century Real Estate Business and Eighteenth Century Recording 22 Am Law Rev 275 (Winter 1973); also P. Bayse, A Uniform Land Parcel Identifier--It's Potential for All Our Land Records 22 Am Law Rev 251 (Winter 1973); and D. Moyer and K. Fisher, Land Parcel Identifiers for Information Systems (1973).

4/ D. Lamberton (ed). Economics of Information and Knowledge (1971) contains a number of now classic articles on the economics of information.

5/ One form of uncertainty that has received attention of economists in recent years has been in the assignment of liability and appropriation of benefit--the so-called externalities problem--which has dominated the "Economics of property rights." As a broad generality, one can say there has been a confusion by economists of an assignment of value problem with an assignment of rights problem.

From a public or economic point of view the arguments for information may be summarized as strongly in favor of the maximum amount of accurate information that cost will allow. From an individual point of view, however, withhholding information can provide private advantage. Much of the world's commerce is conducted on the basis of private advantage of secrecy or misinformation. A substantial portion of the real estate trade, for example, is conducted with privileged (restricted) information. Secrecy is clearly to the advantage of the traders; the advantages to the public at large are less obvious. From an economic or social standpoint of information, the use of a nominee to obscure beneficial ownership is a lie. Whether such lying has overriding advantages to an economy and society should be a matter of public policy discussion.

With the possible exception of the essentially untested law of Iowa, 1/ no state has a system of record keeping that identifies the actual owner of land by his citizenship. Iowa's modest entry into ownership disclosure provides an interesting prelude to the inquiry of individual and national rights to wealth encouraged but not ventured by Alfred Marshall 85 years ago:

> "Individual and national rights to wealth rest on the basis of civil and international law, or at least of custom that has the force of law. An exhaustive investigation of the economic conditions of any time and place requires therefore an inquiry into law and custom; and economics owes much to those who have worked in this direction. But its boundaries are already wide; and the historical and juridical bases of the conceptions of property are vast subjects which may best be discussed in separate treatises." 2/

An Inquiry into the Ownership of U.S. Land

Recitation of facts, such as 4.9 million acres owned by foreigners and 62.8 million acres leased by foreigners, 3/ is a sterile exercise without an understanding of the processes by which land ownership changes, the forces that have affected and will affect ownership distribution, and the effects of investments in land. The authors 4/ of this volume have provided the ingredients of a policy-oriented inquiry into U.S. landholdings, and each paper deserves a separate reading. However, we agreed that a summary of common, and uncommon, issues should pull these ingredients together.

1/ Other states, e.g. Arizona and Nebraska have made some progress toward more complete reporting by trusts and corporations, but, as of this writing, Iowa seems to have the most complete disclosure measure.

2/ A. Marshall, Principles of Economics 51 (8th ed 1920), (1st ed 1890).

3/ For details, see Appendix I.

4/ Uncited references to surnames are to authors of the chapters.

In their most general form the issues can be summarized simply into one: There is lack of knowledge not only about land ownership facts but about their causes and consequences. These causes and consequences form the content of the foregoing chapters, which are digested and combined below under four topics: 1) the real estate institution, and investor behavior within the institution; 2) impacts of foreign investment on the economy in general and on particular sectors and regions; 3) formation and administration of federal, state, and local law; and 4) needs and technology for, and limits on, the disclosure of land ownership information.

The Real Estate Institution

The authors have not premised their analyses on a large volume of foreign investment in land. Nevertheless, their inquiry provides useful insights for policy if a large volume of foreign investing in U.S. land were to take place. A growing familiarity with American brokerage, financing, and transfer institutions will bend to encourage real estate investment by foreigners. Therefore, according to the reasoning by Burke, Harris/Hampel, Dovring and others, even if the proportion of all real estate owned by foreigners is small now, the quantity will probably increase.

Public policy on foreign investment in U.S. real estate needs research on a continuing basis, not only to monitor the facts but to understand and project the public's intentions and interests. Timmons, in his overview of the relation between policy and research, emphasizes that data and reliable analysis are needed so that policies will not be fashioned from emotion, myths, and fragments of information.

Research questions arise as much from perspective as from situation. One perspective of foreign investment is the flow of capital over time. This flow of capital into the country began long before the United States achieved nationhood. Anderson, in his historical review, reminds us that large tracts of West Virginia land were purchased by British investors to sell to immigrants. The story of European investment in U.S. land was repeated across the whole country. Much of the European investment, however, was not channeled into land exclusively. Our historical data must combine time series of total investment with fragments of information on real estate. Often the type of investment would obscure the element of land. Investments by Europeans in American railroads, for example, was a de facto investment in railroad lands, granted by the government and, in turn, sold to settlers.

It would be easy enough to associate the developmental capital which flowed into America in the 19th century with speculations and investments in land. As Anderson points out, rarely are capital accounts sufficiently refined in historical data to distinguish the land element. 1/

1/ There are few data on private land ownership, even on current status. With the exception of the Census of Agriculture of 1900 and a farm land survey in 1945, there are no national statistics on land ownership in the U.S. See, for example, U.S. Bureau of Census, Historical Statistics of the United States, Colonial times to 1957, U.S. Gov't contd.

Benefits stemming from the development of transportation, manufacturing, and construction could be mistakenly attributed to land purchase, sale, and lease. Before an accurate assessment of the economic effects of foreign investment can be made, the purposes of the investment must be known.

In the mid-20th century the locally oriented U.S. real estate market extended itself to a national trade. Then in the early 1970's the American real estate establishment internationalized its perspective. Not only are foreign buyers now undergoing an educational process; American financial organizations, brokers, finders, attorneys, and insurers are learning the international land game. Early in this inquiry we asked: Is there an international real estate institution? Burke, in his section on transnational conveyancing, concludes "yes", but it is still taking shape. The lack of uniformity in state land law combined with possibly overriding federal law creates a complex web of doctrines and rules that are difficult enough for those familiar with American conveyancing. To the foreign investor the rules are even more perplexing. Furthermore, as Brown states infra, laws and ordinances are not always applied equally to outsiders and locals.

The unique and complicated features of the law may account for some of the conservative approaches to real estate investing in these early stages of the internationalization of the institution. The uncertainty of investors and advisors creates a "herd instinct" and causes them to follow regional or sector patterns with which they are familiar. The lack of large-scale, smoothly functioning markets probably affords an opportunity for the one-person, small-firm finders to trade profitably in limited information.

The foreign investor is likely to have a large equity in real estate, purchased not only because of his financial capability but because he is apprehensive about the information requirements of American lending institutions. Unless the foreign investor abandons his traditional reticence about disclosing information, it is likely that effective reporting requirements would tend to discourage foreign purchases.

The complex rules comprising the real estate investment and finance institutions are rooted in, and are implemented in the presence of, an equally complex collection of attitudes and beliefs of citizens about foreigners. The alien land laws are but reflections of attitudes of exclusion from the territorial club. Lack of experience, explains Summers, is no bar to expression of an attitude. Attitudes may be built from complexes of beliefs, and so the attitude toward Arab purchase of a neighboring farm may have nothing to do with a farmer's experience (or lack thereof) with Arabs. Furthermore, his attitude about farm land may differ completely from his attitude about an industrial site. An

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1/ cont. Printing Office, 1960. The 1900 Census of Agriculture reported, incidentally, that 1,097 of the 1.9 million rented farms were owned by foreign owners (ibid table 23). The 1945 study did not identify the nationality of owners.

informed position on public reaction to foreign investment in real estate requires more than ascertaining surface opinions. Thus, informed public policy will require an examination of basic attitudes held by those who influence the content of the policy.

At the other end of the policy chain are the issues related to the uses of power. Ownership and control of land is a means for distributing and exercising power; the rules governing the acquisition of title, the application of regulation, the distribution of income, and the incidence of tax all are subject to the political processes, and as Loveman points out, ownership is actually defined in terms of the location of decision making about the use of land or about the distribution of benefits and costs of land holding.

The relatively few restrictions on foreign ownership of U.S. land is a reflection of the decentralized power of numerically strong landowners and the real estate establishment--brokers, attorneys, financial institutions, and other associated with the transfer and management of real estate. This strong position is not unique to the United States. The political power of land ownership explains why there have been virtually no successful land reforms in the world that did not involve shifts of political power.

The basic political question is, according to Loveman, Do citizens in general have a right to know who owns America's land? His question recognizes directly that information is not only economically valuable but politically powerful. The answer to the question is by no means simple because it inquires into the nature of commercial security, privacy of wealth, and relationship between government and citizen. In the case of foreign ownership of land the answer extends to relationships among nations. Hopefully the answer will express more than textbook cliches on free trade.

Three papers by Paulsen, by Harris and Hampel, and by Currie, Boehlje, Harl, and Harris, examine the real estate institution from the point of view of those participating in the investment process. Paulsen's comparison of German and Iranian investors makes the simple, direct point that investment motivations differ, and these differences will be reflected not only in the type of investment but the manner in which the investment is undertaken. His observations about investment motivations is borne out, partly at least, by the study of real property transfers in Iowa reported by Currie and others. The Iowa study not only found that the number of completed sales to foreign investors was small, but also that the sales were predominately to Germans. The study confirms, to some extent, what Burke refers to as a herd instinct of investors, what Summers suggests about discriminatory attitudes, and what Paulsen says about the preferences of types of foreign investors. The Iowa study incidentally indicates the difficulty of documenting sales to foreign investors.

The investment model by Harris and Hampel rigorously defines the elements of the investor's bidding potential. Their equations state the relation-

ship between the bid prices and the characteristics of the investor, including his risk preferences, value of his portfolio, his tax rate, and his expectations about income. From the model it is possible *a priori* to indicate the sources of bidding advantages to a domestic farm operator or to a foreign investor. The biggest advantage to the domestic operator is greater income per acre. Included in other advantages are the lower transaction costs to domestic bidders. The advantage to the foreign investor is diversification of the investment portfolio so that marginal riskiness is lower than for the domestic bidder. The relative riskiness of investments due to political conditions in other countries may cause the foreign investor to be less risk averse to American property.

From all of the examinations of investor behavior, it seems that improved information could lower transaction costs and encourage better investment decisions as a whole. That is not to say, of course, that it is to the advantage of any particular investor or broker for any particular transaction to reveal anything about his investment intentions or actions.

Economic Impacts

Having examined the character of the real estate institution and the behavior of investors within that institution, we turn now to the economic impact of foreign investment in land. Dovring and Gaffney seek to answer the question: Do purchase and possession of land have the same impact as other direct investments?

Notwithstanding a U.S. policy that generally encourages the inflow of capital, we should be circumspect about foreign ownership and control of land. According to Dovring, the long-run benefits to the United States of foreign investment in land are doubtful. Dovring argues that the society and a private entity differ in their perceived discount or interest rate. Individuals, compared to society, have a high time preference for present income. This difference is particularly significant in calculating the value of a non-depreciating asset such as land. Society can afford to accept a lower rate of return on the value of an asset.

The social account value of land to the United States as a nation is greater than the private market indicates. Therefore, transfers in the private market will not reflect this public interest. According to several of the authors, foreign and domestic purchasers differ in their perception of land as an investment asset. Some of these differences are attributable to tax laws of various nations. The real property tax is payable by all foreign and domestic owners, but other taxes on income from land, capital gains, or inheritance may not be the same for the foreign as the domestic owner.

Dovring and others note the relatively low value of real estate in the United States compared to comparable real estate in other countries. Dovring notes that long-term investors, especially institutional or governmental, can sustain relatively low current returns because of contemplated longer term capital gains. Expectations of such capital gains are supported by the experience in other countries and the probable

policy of the U.S. government to continue programs whose effect is to enhance land values. Given the relative states of management and technology in the United States and abroad, there is small likelihood that foreign investment in land, farm land at least, will result in intensification of use or increased productivity.

In summary Dovring sees few positive impacts resulting from foreign investment in farmland or forest land. Presumably, one could extend some of this arguments also to open land suitable for development. A similar case against foreign investment in real estate which results in construction, development, employment, formation of joint-venture capital, and transfer of technology would be less convincing.

Sales of land to foreign investors, according to Gaffney, are equivalent to borrowing abroad. The real issues are the impacts of real property investment which are conditioned in large part by domestic institutions. Presumably, therefore, problems associated with international land transactions are manageable as domestic policies.

Gaffney enumerates advantages of foreigners purchasing land such as: a transfer of capital in time of need, the stability of land sales over flights of "hot money," the economic and political stake of foreigners in the United States, the balance of U.S. investment abroad, the infusion of new management, and obviation of policing a restriction. The disadvantages include loss of control of resource use by U.S. citizens, the preference for less intensive land use associated with foreign investor preference for minimum management, loss of sovereignty associated with land, less concern of foreign investor for community well being, loss of tax base through income and consumption taxes. loss of secondary demand because of absenteeism, and increased ownership concentration.

The net advantage of disadvantage to a nation of direct foreign investment, according to Gaffney, depends on the structure and operation of the domestic institutions. In particular, he notes that the tax structure generally favors the foreign investor. The exception is the property tax; Gaffney suggests real property taxes as a way to offset disadvantages associated either with foreign investment, or with traditional preferences land and landowners have enjoyed in the economic system. He and others note that foreign investment in real estate is not in itself a problem but is, instead, a symptom of a lower domestic capacity for capital accumulation.

The general analyses by Dovring and Gaffney pertain to the abstract qualities of land. However, the impacts of foreign investment will differ widely among land uses and regions. Several analyses were directed to specific uses--namely, farmland in Iowa discussed above; forest land; minerals, especially in West Virginia; recreation and other uses in Hawaii; and land ownership in Texas and Colorado.

Both Irland and Labys, in examining respectively timber and mineral resources, stress the importance to foreign investors of assuring supplies of natural resources for their homeland. They note that land ownership

is only one of the ways of assuring supply. Land use and income may be controlled by leasing, contracting, and even marketing practices. Commonly, control is obtained by a combination of ownership, leasing, and contracting--often through complex systems of subsidiaries and affiliates.

Although land prices are low and growth rates are high in the United States in relation to the rest of the world, foreign investment in timberland has been small--one third of one percent of U.S. commercial forest land. Irland explains that timberland, with its management requirements and cash flow delay, is unattractive to the foreign investor. In Alaska, forest production of interest to the Japanese is on state and federally owned land. Japanese investment, therefore, has gone into processing logs and pulp. Except for Alaska, most of the foreign investment in American timber serves the U.S. market. The economic effects of foreign investment in timberland, according to Irland, have not been negative. This may be accounted for in part by joint ventures with American investors.

Foreign investment in coal has been heaviest in coking coal; mines with foreign investment produced 16 percent of the U.S. coking coal. Labys estimates that West Virginia mines with foreign interests would produce 18 percent of the state's production by 1978, a doubling in 5 years. Labys judges that foreign investment in mining processes has a favorable impact on the balance payments, employment, and income. He indicates that the predominant investment is in extraction and processing rather than in mineral land ownership. He does not assign any particular economic benefit to foreign ownership of mineral rights or mineral land ownership. He points out the inadequacy of available data, and recommends "considerable further work."

Gertel, in his study of foreign, largely Japanese investment in Hawaiian real estate, noted that ownership of nearly 40 percent of the hotel units in Waikiki and a substantial portion of the condominiums was of the structures while land remained in Hawaiian ownership. About one fourth of the $517 million of foreign real estate investment in Hawaii in 1975 was new construction, estimated to have increased income to Hawaii households by some $178 million. Foreign real estate investment expanded the economy of Hawaii but also added to problems of congestion, traffic, the over supply of condominiums and high land prices. Some two-thirds of the foreign real estate investment was take overs of existing resort facilities, sugar plantations and purchase of land tracts. The national impact of these take overs could not be fully traced; they depend, among other uncertainties, on whether sellers invested funds received in the American economy. Gertel, like Gaffney, stresses land use and tax policies as basic defenses against adverse impacts of foreign, as well as domestic real estate activities. Citing citizens' concerns he calls for authoritative information on foreign owned real estate supported by an adequate data base.

he Colorado real estate market examined by Waples reveals a familiar problem in identifying current or prospective foreign investors. Colorado law for example requires assessors to file, annually, a list of

nonresident taxpayers, but there is no requirement that the beneficial owner be identified. Through personal interviews with real estate brokers and counselors, Waples was able to identify some urban, recreation, and development action in the real estate market. Although some farm and ranch land has been sold and many more inquiries have been made, the amount of land is small; Waples could verify only 1,780 acres and rumors of about additional 38,000 acres. Inquiries apparently are numerous; transactions are few.

The Colorado survey of bankers, brokers, extension agents, recorders, and assessors revealed little or no strong opposition to foreign investment by Coloradans. According to Waples the import of capital is favorably regarded by Coloradans. Two reasons are given for opposing foreign investment--absentee owners have no interest in community affairs, and outside investment causes land prices to rise.

Schmedemann divides the real estate market into separate submarkets in terms of the types and objectives of buyers. He found that most foreign investment was disadvantageous to communities and agriculture. In addition to two traditional markets based on 1) production income and 2) consumption utility, he identifies 3) an inflation market for foreign and domestic buyers. Particularly under the conditions existing in Texas and the Southwest, an absentee foreign investor will have little incentive to invest in rural communities. Typical expenditures associated with foreign investment will have low multipliers and high leakages. Community consolidations and shifts of economic activities to larger centers will result not only in economic changes but changes in political outlook. Because the proportion of land changing hands is small--probably less than 2 percent--a relatively small number of transactions can affect land values. An increase in foreign investment in agricultural real estate will increase land prices and thus increase the cost of agricultural production. Schmedemann sees a number of reasons for an increasing trend in foreign investment in Texas and Southwest rural real estate, but little advantage of such investments to communities or to the area's agriculture.

Law of the Land

Law--its foundations, structure, and administration--will have a significant bearing on real estate as an investment. American law has a number of features, not well understood by foreigners, that could influence investor behavior. Some legal issues have yet to be completely resolved. One such issue is the strength of state laws prohibiting foreign holding in light of the treaty powers of the federal government.

Law affecting land use and development has been more prominent in urban areas. Zoning, subdivision controls, building codes, and health regulations are found in both rural and urban areas, but they are of greater significance in urban areas. Thus Brown, in his review of land law impacting foreign investment, focuses his analysis on urban land. He notes that the number, complexity, and divergency in local applications

of land use regulations reduce the attractiveness of real estate as a foreign investment. For development particularly, the intricacies and inconsistencies of local land laws are a deterrent to investment.

Zoning law does not differentiate between foreign and domestic land owners. The alien investor will not be affected per se by his alien status. Within broad guidelines, however, there remain wide areas of discretion by local officials. Brown emphasizes that the zoning game is sometimes played with favoritism; "outsiders," foreign or domestic, are at a disadvantage. Foreign investors may be advised to joint-venture with those who are locally favored.

Subdivision regulations have increased, and subdividers have been required to accept more of the costs of installing utilities. Community management and control has expanded and, as in the case of zoning, approval and monitoring of subdivision regulations can be exercised in discriminatory ways. Housing and building codes, too, vary widely, not only in the provisions of the ordinances but in their application.

One possible source of misunderstanding is the power of eminent domain held by most levels of government. Its significance is lessened somewhat by its infrequency of use. Nevertheless, foreign investors may be unaware of the ease with which land can be condemned, not only by federal or state governments but by the delegation of this power to private entities. Of course, just compensation must be paid, but presumably courts could, even if now they do not, compensate at considerably less than market value.

Brown also reviews management and control processes exercised by property owners' associations, condominia associations, realtors, builders, and other trade associations which impact on development either through their role under statutes and ordinances or through contracts and covenants. At the other end of the government scale are state, regional, and federal agencies. Environmental and consumer protection legislation will affect not only the ease with which real estate is marketed but the uses to which the land may be put. Alien investors could over emphasize the American constitutional protection against expropriation of private property unless they are carefully advised of the exercise of eminent domain powers or the effects of other controls and taxes.

At the other end of a legal spectrum affecting foreign investment is international law including customary law, multilateral treaties and bilateral treaties. Morse concludes that treaties, coupled with most-favored nation clauses, severely limit federal or state laws attempting to restrict alien ownership. However, a registration requirement, either of state or federal government, would not be superseded by a previous treaty or be in violation of a treaty.

With the possible exception of land under the sea neither customary law nor multinational treaties have any important bearing on foreign land holding. Bilateral treaties, however, do affect directly the alien ownership of land. Citizens of Denmark and Ireland may own land for

almost all uses except agriculture and mining. Six other treaties provide most-favored nation treatment as to acquiring and possessing land. Most countries allow time for disposing of land if alien status is a bar to possession.

Most bilateral agreements are the treaties of friendship, commerce, and navigation which contain provisions granting persons or corporations specific rights to own or use land in the United States. Usually the treatment grants a level of treatment pertaining to the specific right. National treatment guarantees that the national government will not discriminate between aliens and citizens and states will afford the same treatment as citizens of other states. Most-favored nation status assures the alien that he will be treated the same as a citizen of any other foreign country. The supremacy of treaties, and most-favored nation provisions severely limit state laws restricting inheritance and possession of land. Of the 43 treaties currently in force about half have granted national or most-favored nation treatment to aliens for ownership or lease of land for residential, industrial and commercial purposes. Agriculture and mining are excluded. This means that state laws which confine their restrictions to agricultural or mineral land are less likely to be superseded by treaty.

Morse also reviewed the laws of Yugoslavia, Mexico and Canada, three countries which have recently examined their alien ownership policies and which represent widely differing political perspectives. Yugoslavia, which permits private ownership of only residences and small plots by its citizens does not permit any direct alien ownership of land. Its imports of capital are through joint ventures with the alien retaining title to his assets but not acquiring an interest in the enterprise. Some modifications of law relating to use are resulting from the Yugoslav desire to encourage capital investment from abroad.

An alien wishing to acquire ownership or control over Mexican land is subject to that country's Foreign Investment Law. The law prevents foreign ownership of coastal and border land. It also reserves some land uses to the Mexican government or Mexican companies, usually mining or forestry. Registration is required of alien investors with penalties for failing to register.

In Canada restrictions on alien ownership differ by provinces. Restrictions by the federal government under the Foreign Investment Review Act (1973) also will have a bearing on alien ownership but the division between federal and provincial responsibility is still not entirely clear. Purpose of the FIRA is to screen foreign investments generally and as yet has had little to do with real estate. Older authority, the British North America Act delegates to the provinces the power to regulate, manage and sell real property to the public. In some provinces there are no important restrictions even on state owned land and in others, such as Prince Edward Island and Saskatchewan, alien ownership above a specified amount is prohibited.

In Alberta, Nova Scotia and Ontario, alien investors are required to register. The Nova Scotia Land Holdings Disclosure Act requires all non permanent residents who acquire land holdings, and anyone acquiring on their behalf, to register. The Nova Scotia law was recently upheld in court. Ontario not only registers alien land investors but charges a 20 percent transfer tax. The Ontario Law has the effect of making up some of the disparity between private and public value of real estate.

The law of the land as it affects foreign investment in U.S. real estate, extends much beyond the state restrictions on alien investment. Brown shows how zoning and subdivision law--the discriminatory manner in which it may be administered--may influence investor decisions. Morse shows that treaties and federal supremacy nullifies much of the state limitation if in fact it were effective. Both writers indicate the need for better information and recommend a policy of reporting or registering alien interests in land.

Information

From the outset of this inquiry the authors have been perplexed by the absence of aggregative statistics on alien investment in land. The lack of land ownership information is not unique to alien investment. On any but the local level we do not know who, domestic or foreign, owns the land. Universities, private organizations, and federal agencies are attempting to obtain better information, but a national system for data collection has yet to be developed. The final section of this report focuses on what may be the only fundamental policy issue--information. Who gets what from whom, how, when, and where.

Most of the authors in some way touched the information question, but Zumbach, Harl, and Cook made it the central focus of their papers.

The two most logical sources of land ownership data are the conveyancing and tax assessment process, and these processes are within the authority of the states and are administered by localities. We therefore look first to these governments. However, it appears that an adequate land ownership system will require some federal action or a coordinated federal-state-local undertaking.

From the standpoint of data on alien ownership, the most advanced state reporting procedure appears to have been designed by the 1975 Iowa General Assembly. Iowa has had restrictions on alien ownership since the 19th centruy but without monitoring. As described by Harl, the procedures under the new act (House File 215) call for corporations, partnerships, and nonresident aliens who own or lease agricultural land for farming to report annually to the Iowa Secretary of State. The report includes the identity of beneficial owners. County assessors are required to submit lists of names and addresses of aliens, corporations, trusts, and other entities shown on the assessment rolls. Data from the first year's reports are expected in mid-1976. Experience with the Iowa reporting law will indicate what can be done at the state level.

Zumbach and Harl review the implications of state and federal reporting, assuming certain ownership information needs. State recording acts, as presently written, do not provide a basis for adequate reporting of alien ownership because 1) alien status of the owner is not required during the recording process; 2) the holder of legal title is not necessarily the beneficial owner; and 3) although there are some risks associated with not recording title, it is not a legal requirement. The problem of beneficial ownership, as Zumbach and Harl write, is likely to be a problem in any reporting procedure, not just in title recording. Artificial entities may have no idea who the holders of equity interests may be at any one time. Although collection of the information is possible, it is likely to be costly and would probably be resisted by large firms. Even if all beneficial ownership were identified the reporting system would not reveal control.

If the reporting requirements were to rest solely with the states, there would be little likelihood of consistency of concepts or procedures among them. Further, because of the full faith and credit relationships among states, a state that wanted to become an anonymity haven would probably not have to report investor information to other states. Zumbach and Harl therefore conclude the need for some federal involvement. They rely on the commerce clause for federal authority to create a reporting system. They also might have included the "general welfare" clause. Their analysis points to a need for some combination of 1) existing state and local responsibilities for real property taxation and title recordations, and 2) federal standards, coordination, and collection of data.

Although some federal, state, and local government involvement may be assumed, professional and private associations could take an important--perhaps a primary--role. The titles of the Uniform Simplification of Land Transfers Act (USOLTA), dealing with recording for example, might be so worded as to provide suitable information reporting. Research departments of organizations such as the National Association of Realtors or the American Land Title Association might generate aggregative data from their membership.

The technical issue of information on alien land ownership is that the data sources are local, subject to avoidance and evasion, and oriented to a single transaction such as paying a tax or conveying an interest. In contrast, data needs are national or state, aggregative, and unambiguous. Any continuous monitoring procedure by the federal government will require a new program and new authorities. A single-purpose monitoring program probably would be too costly except on sample of such small a size as to be dubious reliability. A proposal for a specific system may be premature but some features of an adequate system can be identified.

The land data system should be:

1. Oriented to ongoing local functions such as planning, zoning, conveyancing and tax paying.

2. Updated regularly and frequently (no less than annually).

3. Comprised of data not only of alien status of land owners, but by type of owner (government, corporation, individual, etc.), and area and value of the property.

4. Oriented about a universal system of identifiers.

5. Designed to provide adequate security for data considered to be outside the scope of public information.

Such features are being discussed by a number of professionals and organizations. The chapter prepared by Cook discusses a 13-year review of organizaed efforts in land record improvement that lead to the North American Institute for Modernization of Land Record Systems (MOLDS).

The MOLDS institute, incorporated in the District of Columbia in 1974, is an association of 16 Canadian, Mexican, and U.S. governmental and professional organizations seeking to design compatible land data systems. The general objective of the association is the coordination of land recording functions from the national to the community level, with the view to design a national cadastre. U.S. involvement in the Institute is heavily influenced by over a decade of work by one of the Committees of the American Bar Association. This Committee is seeking to improve the archaic state of title records and recording. The Institute places emphasis on systems that could yield aggregative information while performing regular government functions. In concept the national cadastre could provide information on alien (or any other) ownership while satisfying the needs for conveyancing, assessing, planning, and other local and community functions. The national cadastre would eliminate duplicative data gathering, lower the system overhead, provide better security of information, and coordinate public and private land requirements. Although the cadastre may not be the only or the ideal solution to the problems of missing data on alien land ownership, it is a concept with promise.

The design of efficient information systems implies more than technical issues. Systems which provide easy, inexpensive access to ownership information also imply value issues--that is, public disclosure. Should the quantity, value, and location of real estate owned by aliens be public? Should the owners' names and characteristics be related to types, quantities, and location of land? Those supporting a negative answer to the two questions refer or allude to privacy. They associate ownership of land with personal anonymity and, therefore, disclosure is an infringement on personal rights of privacy. Ownership information is also regarded as valuable stock in trade, and to publicize is to expropriate. Another argument against disclosure is that reporting takes the time of property owners, is a nuisance, and serves no useful purpose.

Those supporting the reporting and disclosure of real estate ownership (including alien status) argue that the transactions of transfer of real estate are already a matter of public record; indeed, the act of

conveyance and possession are public for the protection of the owner. Disclosure therefore is a matter of efficiency in information handling, not a change in intent or purpose. A fundamental premise of the operation of a free market is complete, accurate, and ever-present information; and in an exchange economy, what can be more basic than knowing who the exchangers are? Monopoly (whether of use or information) is inimical to the operation of a free market. Reporting of information, its assembly, and analysis require time and resources it is true, but these transaction costs are characteristic of an organized economy or society. The real issue is, how can these costs be minimized? The present system of small, duplicative, sometimes counter-productive enterprises seeking to acquire, monopolize, and market information is quite likely, in the aggregate at least, to be far more costly than a single, open system providing unlimited access to ownership information. A completely open system of ownership information would serve not only private commercial interests but also public bodies that need information on national and international capital flows, fiscal and developmental planning, and the management of government services.

The value issue must be resolved in forums other than in this report because the authors represent a very small, and by no means representative, cross section of the American society. On the basis of the analyses thus far, however, we can reach some conclusions.

Conclusions

Alien investment in U.S. real estate as a policy issue can be reduced to two questions:

(1) Should the opportunity to own U.S. land be conditioned in any way by citizenship status?

(2) Should information on the ownership of land, nominal and beneficial, be readily accessible to the public?

This report has dealt with many refinements and ramifications of the questions. We now attempt to answer them as simply and directly as possible, even with qualifications.

(1) Ownership restrictions and conditions

There is an economic basis for restricting foreign ownership of at least some types of land under some economic circumstances, particularly from a long-range point of view. Under some circumstances, foreign investment may overcome shortages of capital brought about by an unwillingness or inability of domestic savers to invest. If capital shortages are impeding development, foreign injections may boost employment and income, and stimulate growth. An important issue, beyond the scope of this study, is how foreign investment replaces or stimulates domestic savings and investment. The purchase of raw land is purely an economic transfer, with no increase in the quantity of available resource. The exchange of money for land, of course, may have the secondary effect of providing funds to the previous owner who either 1) hoards, 2) invests, or 3) purchases consumer goods. The impact of foreign in-

vestment in raw land depends on the economic behavior of such previous owners and the follow up behavior of the new owners.

The initial impact that foreign investment in real estate has on employment, income, and growth appears positive on net but subject to some negative effects such as increased land prices. In the long run, real estate investment yields interest or rent with a reverse effect on the balance of payments. Both the initial and long-run impacts of real estate investments are affected by general economic conditions.

Perhaps the economic issue is best stated as a converse question: If the U.S. economy is in need of foreign investment, might there be places to invest that would be more advantageous to Americans than their land?

There appear to be social, political, and legal bases for restricting foreign ownership of land. These bases exist as facts, however, and they do not necessarily provide a guide for what ought to be. Policies must be decided on examination of fundamental values. Values pertaining to foreign ownership of land are often influenced by beliefs about community, sovereignty, and independence as well as economic well-being.

In place of outright restrictions on foreign ownership of land, there are other policies applied to all owners that could lead to preferred outcomes. For example, the United States or the states could discriminate in price to foreign purchasers, perhaps by surcharges such as Ontario's 20 percent transfer tax. Guiding land use and development, sharing of returns from land (through no-escape income and transfer taxes), and improving the structure of ad valorem property taxes offer greater promise as land policies.

(2) Information

From the standpoint of existing treaties and domestic law there appears to be a much stronger basis for improving reporting systems which reveal foreign ownership than for restricting foreign ownership. The bulk of land ownership information is now in public records. It fails to be of public use only because of the system's awkwardness and inability to aggregate. Relatively few changes in law, such as those in Iowa, could start to draw back the curtains of ownership secrecy.

In an economic system premised on private property and a free market, the efficient allocation of resources calls for complete information. Economically rational allocations rest on accurate assignment of benefits and costs to owners of resources. High costs associated with the assembly of information or the monopolistic control of information tend to produce bad economic decisions.

Information assembly and organization is not without cost, however. Economic decisions often must be made without complete information because the expected benefits from the additional information are less than its cost. Nationwide data on land ownership appear collectible only from local government sources. Thus, unless there is federal

involvement, data would be inconsistent and irregular. But the cost of a single-purpose data system would be excessive. Therefore, the preferred information system will be based on state authority for property assessment and title recording, operated by local governments, and standardized through the federal government.

Recommendations

Recommendations correspond to the two basic issues stated above:

(1) Continue the current policy of limited federal restrictions on the alien ownership of land, without pre-emption of state restrictions, pending the completion of a comprehensive empirical study of the long run economic, social and political impacts of foreign real property investments.

(2) Develop sources and procedures for the reporting of completed investment transactions to a federal agency or agencies, with regard to the extent, location, values, and uses of all real property conveyed or under contract to foreign individuals and entities, whether nominal or beneficial owners.

(3) Encourage states to adopt legislation requiring local officials to identify alien interests in real property to make such interests items of public record systematically reported to the state for collection and analysis by an agency or agencies of the federal government.

(4) Promote the design of systems to collect and process information on real property more efficiently and at reduced cost. Create a commission with representation from Congress, selected federal agencies, organizations of state and local officials, professional societies, and private industry to recommend system standards.

APPENDIX I

Land: Something of Value

Symbols, ideas and concepts are the essence of civilized intercourse, and land investment policy has its own semantic. The importance of a concept or conception may be illustrated in the way or ways we think about the value of land.

According to the market view of "real estate," the 1975 value of private

real estate as a stock asset is $2,655.6 billion. 1/ This value is the market price of privately traded real estate, representing the sum of productive returns or consumptive worth of real property less taxes. Real property taxes projected to 1975 are approximately $52 billion annually. 2/

Public real estate may be similarly valued at $705.9 billion. The total value of real estate traded in the private market plus the value of public real estate is $3,361.5 billion in 1975. 3/

Is the total above a full accounting of values? We counted the value of publicly held real estate and the market value of publicly held real estate and the market value of privately held real estate. Real property owned by private holders yields benefits, less taxes, to owners and is so capitalized. But the revenues collected through taxes also are measures of value; they simply accrue to government rather than the private owners. Real property taxes represent partner government's share of "privately held" real property. If the $52 billion annual taxes were capitalized, say, at 5 percent, the total value of American real estate would be increased by $1,040 billion. This $1,040 billion added to the private value of privately held real property plus the publicly held real property yields a total of $4,401.5 billion. 4/

1/ The estimate of 1973 real property assessed value of $679.4 billion and the 1973 assessed value excluded from taxes of $27.6 billion are taken from U.S. Bureau of Census, Census of Government, Property Values Subject to Local General Property Taxation in the United States, 1973 Special Studies No. 69, Dec. 1974, p10-11. The comparable values for 1975 are projections of the 22.8 percent change from 1971-73, multiplied by a sales/assessment ratio of 1.327.

2/ The real estate property taxes were derived from U.S. Bureau of Census, Census of Government, Governmental Finances in 1972-73, Table 4, 1974, p20, for all property taxes. The ratio of .85 real property as a proportion of all property taxes is from Advisory Commission on Intergovernmental Relations, The Property Tax in a Changing Environment M-83, Mar. 1974, p267.

3/ The public land esimates are based on the ratio of values private and public in U.S. Securities and Exchange Commission, Institutional Investor Study Report, Supp Vol 1, Mar. 10, 1971 House Doc 92-64, part 6, 92nd Cong. 1st sess Appendix II by Grace Milgram, and a projection of the ratios of 1952, 1960, and 1968 to 21 percent of total value, i.e. $705.9 billion.

4/ The estimates of real estate values, while based on the data available, are dependent on projections and interest rate assumptions so they should be regarded as illustrative only. A further refinement in the idea of real estate could distinguish land from capital embodied in land. Land is about 1/3 of the value of real estate. Statistical Abstract of 1973 table 564 (1973) p343.

APPENDIX II

Land, property, plant, and equipment held by foreign investors, type by state [1/]

State and region	Land and mineral rights			Value of property, plant and equipment [2/]				
	Total owned and leased	Owned [3/]	Leased [4/]	Total	Agricultural and timber	Petroleum	Other natural resources	All other [5/]
	-- 1,000 acres --			-- million dollars --				
Total	67,701	4,896	62,805	45,454	491	8,384	2,366	34,213
New England	D [6/]	D	2	1,701	D	D	16	1,660
CT	1	1	* [7/]	496	0	D	D	478
ME	D	D	*	281	D	*	*	181
MA	2	1	*	595	0	0	0	595
NH	3	3	*	128	0	0	D	123
RI	*	*	*	110	0	0	0	111
VT	D	D	2	92	0	0	0	21
Mideast	415	D	D	7,385	D	18	D	7,293
DE	D	D	*	454	0	0	0	3
DC	*	*	*	52	0	0	0	42
MD	4	4	*	604	0	0	0	124
NJ	16	16	*	2,256	*	0	1	1,635
NY	D	24	D	2,724	D	17	D	2,692
PA	D	D	D	1,295	D	*	D	1,235
Great Lakes	3,985	D [6/]	D	6,448	D	149	368	5,777
IL	D	D	D	2,011	2	D	178	1,749
IN	D	D	D	655	1	5	185	417
MI	D	49	D	1,494	1	D	D	1,365
OH	31	5	26	1,648	D	* [7/]	D	1,585
WI	D	D	D	640	D	*	D	521

See footnotes at end of table.

Continued

APPENDIX II

Land, property, plant, and equipment held by foreign investors, type by state [1/] - continued

State and region	Land and mineral rights			Value of property, plant and equipment [2/]				
	Total owned and leased	Owned [3/]	Leased [4/]	Total	Agricultural and timber	Petroleum	Other natural resources	All other [5/]
	-- 1,000 acres --			-- million dollars --				
Great Plains	1,529	182	1,347	2,622	14	108	582	1,919
IA	2	2	*	329	*	*	*	329
KS	183	D	D	328	3	56	0	268
MN	141	100	42	1,093	1	0	D	400
MO	50	21	29	654	D	1	D	595
NE	49	*	48	94	D	9	0	52
ND	1,070	D	D	109	0	38	*	7
SD	34	9	24	17	*	4	*	12
Southeast	5,521	1,290	4,231	10,360	231	1,348	286	8,495
AL	723	153	570	645	D [6/]	36	* [7/]	505
AR	248	D	D	163	D	19	0	136
FL	1,376	D	D	904	30	D	D	845
GA	220	D	D	639	D	*	D	605
KY	367	D	D	427	10	D	48	354
LA	653	56	597	2,616	23	1,123	D	1,429
MS	645	74	571	330	D	156	2	91
NC	150	D	D	1,297	20	0	6	1,271
SC	202	D	D	1,437	D	0	2	1,380
TN	663	D	D	736	D	1	5	702
VA	24	D	D	637	D	*	D	613
WV	250	40	210	528	*	1	152	375

See footnotes at end of table.

Continued

APPENDIX II

Land, property, plant, and equipment held by foreign investors, type by state [1/] - continued

State and region	Land and mineral rights			Value of property, plant and equipment [2/]				
	Total owned and leased	Owned [3/]	Leased [4/]	Total	Agricultural and timber	Petroleum	Other natural resources	All other [5/]
	-- 1,000 acres --			-- million dollars --				
Southwest	6,177	356	5,820	5,208	41	2,139	267	2,762
AZ	684	D	D	295	18	*	D	118
NM	1,830	D	D	311	0	206	D	57
OK	566	19	548	585	0	349	*	189
TX	3,097	153	2,944	4,016	22	1,584	D	2,225
Rocky Mountain	7,999	473	7,526	1,156	8	403	375	369
CO	D [6/]	393	D	448	D	44	D	185
ID	D	1	D	35	D	* [7/]	D	13
MT	2,049	35	2,014	153	*	D	10	6
UT	2,411	37	2,374	298	0	D	86	41
WY	1,734	7	1,726	221	0	93	D	29
Far West	5,204	1,541	3,663	7,034	164	1,890	107	4,873
CA	1,474	773	701	3,963	108	1,086	D	2,589
NV	1,732	D	D	43	1	1	D	28
OR	D	D	D	137	25	0	*	106
WA	D	20	D	616	17	3	5	591
AZ	1,182	D	D	1,560	1	800	2	731
HI	110	51	60	716	11	0	0	704

See footnotes at end of table.

Continued

APPENDIX II

Land, property, plant, and equipment held by foreign investors, type by state 1/ - continued

State and region	Land and mineral rights			Value of property, plant and equipment 2/				
	Total owned and leased	Owned 3/	Leased 4/	Total	Agricultural and timber	Petroleum	Other natural resources	All other 5/
	-- 1,000 acres --			-- million dollars --				
Puerto Rico.....	D	D	*	180	*	D	0	61
Other territory and offshore..	D	9	D	2,251	0	1,764	3	162
Foreign.....	31,350	D	D	1,110	1	536	D	232

1/ Source: U.S. Dept. of Commerce, Bureau of Economic Analysis, Survey of Foreign Direct Investment 1974 Preliminary; final tables not available for this report.

2/ Value at historical cost. Figures shown include, but are not limited to, real estate. Value includes all property on which taxes are paid. Value figures are not limited to areas of 200 acres thus, for example, a large industrial plant on 100 acres would appear in the value figures but not in the acreage.

3/ Land and mineral rights owned; if total exceeds 200 acres.

4/ Land and mineral rights leased from others, if total exceeds 200 acres.

5/ Includes transient lodging, residential and recreational, industrial, other commercial and business and other.

6/ D - Data combine with other entries to prevent disclosure.

7/ * - Less than 500 acres or $500,000. Totals may not equal detail due to rounding.