

**LAND USE PLANNING AND PROBLEMS OF LAND USE CONTROL
AND PROTECTION IN UKRAINE**

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Abstract. The concept of the National Target Program for Land Use and Protection, approved by the Government in January 2022, defines the current state of land resources in the majority of the country as tense, and in some areas, as crisis-prone with a tendency to deteriorate. One of the reasons for the irrational use of land is the absence of a unified state system for their protection.

This article explores the problems of improving the legal framework for special land protection in accordance with the provisions of Article 14 of the Constitution of Ukraine. Emphasis is placed on the need to codify the norms of the current legislation in accordance with the constitutional requirement and the official legal definition of this term. The unified land protection system should include a central executive authority responsible for land relations, returning the social, economic, and ecological functions of land preservation, rational use, and protection of land resources potential, as well as the development and implementation of legislative norms and regulations for land protection, justified land use restrictions, ecological incentives, and land monitoring.

The state of scientific developments in land use forecasting and planning is examined, as well as the features of preparing predictive (pre-project) land management documentation. Legislative changes related to the preservation of

agricultural agreements and the exemption from losses in agricultural production, caused by land withdrawal from circulation and their deterioration, are analyzed.

Proposals for reforming the land use and protection control system are substantiated, with a focus on concentrating state control in an executive authority that is independent and not responsible for implementing state land policy. This includes returning local councils' functions for self-governing control, aligning their powers with those of state bodies regarding land use and protection control, and creating a system of public control under the auspices of local councils and territorial communities.

Keywords: Forecasting, planning, land use, special land protection, land survey documentation.

Problem Statement:

The Constitution of Ukraine recognizes the societal significance of land for the Ukrainian people and the principles of its special protection as the country's primary national wealth. [1] The primary wealth of land is determined not by its market value indicators in a market economy but by its indispensability as a means of production in agriculture since nearly 98% of the total food production comes from the land. [2]

Comparisons regarding the use of the same land plot for agricultural production or the placement of industrial facilities based on the volume of production generated on this area are inappropriate. The value of industrial production is incomparably higher, but achieving food security and promoting sustainable agricultural development in the world ranks second among the Seventeen Sustainable Development Goals defined by the United Nations Summit in 2015.

In the current legislation, the term "special protection" is replaced with the term "protection" as an object. [3] Soils are recognized as an object of special protection, [4] and there is no official legal definition of the term. We believe it would be appropriate to introduce an official definition of the term "special

protection of land as the fundamental national wealth of Ukraine" into the Zakon Ukrayiny "Pro okhoronu zemel' " and codify the provisions of the Zemel'noho kodeksu Ukrayiny, Tsyvil'noho kodeksu Ukrayiny, Zakonu Ukrayiny "Pro okhoronu zemel'" and other legislative acts in accordance with Article 14 of the Constitution of Ukraine.

It is extremely important to specify the legal foundations, principles, and provisions for the implementation of this constitutional requirement. This includes establishing a unified land protection system and having a central executive authority responsible for implementing state policies in the field of land relations. Concentrating land management efforts on creating a favorable economic and environmentally safe environment, as well as fostering the development of productive forces in Ukraine, while returning to land use its social, economic, and ecological functions. Completing the development of regulations in the field of land protection and implementing a scientifically grounded system of land use restrictions and ecological incentives. Furthermore, improving control over land use and protection and monitoring land and soils.

The term "land use" is interpreted as a set of activities carried out by society in the process of studying, allocating, utilizing, and protecting land as the fundamental national wealth, with the purpose of placing productive forces, developing the national economy, and ensuring favorable living conditions for people. [5, 23]

Аналіз останніх досліджень і публікацій.

Development of the National Target Program for the Use and Protection of Land in Ukraine, regional provincial programs for land use and protection, land relationship development, soil fertility restoration, and the Kyiv City Program related to the activities of the Main Research and Project Institute of Land Management, as well as the teams of regional research and project institutes of land management of the State Land Agency and the State Geodetic Service, as well as the municipal enterprise "Kyiv Institute of Land Relations" of the Kyiv City Council. The development of these programs was directly supervised by many

researchers, including Dobryak D.S., Bystriakov I.K., Hutsuliak H.D., Dorosh Y.M., Mukhovykov A.M., Novakovskiy L.Ya., Palekha Yu.M., Tretyak A.M., and others. They have published scientific papers, articles, and prepared projects of regulatory acts on land use forecasting, as well as land use planning and protection. [6-11, 22, 24, 25]

Professors L.Ya. Novakovskiy and A.M. Tretyak generalized the scientific and methodological principles of preparing predictive (preliminary) and planning documentation, which was published in 2015 in the Land Management Handbook (Chapter 3, pp. 192-220) [9].

Due to the decentralization of governance and the reform of local self-government, professors Martyn A.G., Novakovska I.O., Dorosh O.S., Palekha Yu.M., and others have conducted research on the issues of improving territorial planning for territorial communities, including the features of developing land-use documentation and land management schemes in modern conditions. [12-14]

Additionally, attention should be given to a series of pilot projects for comprehensive spatial development plans for territorial communities in the Kharkiv region. These projects were developed by joint teams of developers of land management and urban planning documentation. These projects combine various types of land management and urban planning documentation into a single document, as required by legislation [15].

The purpose of the article is to develop proposals for the creation of a system of legal acts for special land protection and normative documents for land use forecasting and planning in the field of land regulation and protection, as well as the compilation of relevant land management documentation.

The article analyzes the system of control over land use and protection as one of the most important factors in rationalizing land use and preserving and restoring land resources.

Materials and Methods of Scientific Research:

Depending on the research objectives, a dataset of legal acts and predictive documentation for land use and protection in Kyiv city and certain regions for the

period 2001-2025 was analyzed. Various methods of analysis were applied, including monographic, systemic-analytical, and others.

Results of the Research and Their Discussion.

According to the Land Management Handbook, the forecast (preliminary) land management documentation includes:

Land use and protection programs (national, regional, local);

Land management schemes (administrative district, anti-erosion measures of gully-ravine systems, hydrographic basin). [9]

In the Ukrainian Law "Pro zemleustriy", the development of land management schemes for anti-erosion measures of the ravine-gully system and the hydrographic basin is not provided for, although such schemes were previously developed. Currently, technical and economic justifications for the use and protection of lands within the "respective administrative-territorial units are being developed." [16]

The program has its main objectives: justifying the land needs of each sector of the national economy in accordance with their development forecasts and future placement; identifying lands that can be used to increase agricultural production or for non-agricultural purposes without compromising the stability of soil-biological ecosystems; determining the areas of land that require protective measures against adverse processes and factors; estimating the capital investments required to improve the utilization and protection of agricultural lands, prioritizing actions, and assessing the economic efficiency of the planned measures.

The main provisions and proposals regarding the development of a nationwide land use and protection program have been discussed in the article "Land Management and Issues of Protecting the National Wealth," while the legal foundations and experience of developing regional land use and protection programs are outlined in an article with a similar title. [17]

Unfortunately, as of October 2023, according to the Concept of the nationwide program dated January 19, 2022, the government has not submitted the

actual Program draft for consideration. Moreover, the changes to the Concept, which were influenced by the state of war, have not been implemented. This delay in submitting the Program draft for approval by the Verkhovna Rada of Ukraine hinders the rational redistribution of lands and the acceleration of investment projects aimed at restoring the economy during the state of war and the subsequent reconstruction period (over the course of 10 years following the cessation of the state of war).

Proposals were made to implement the mentioned projects on agricultural and/or industrial lands, excluding lands within the territories of regional centers, Kyiv, and Sevastopol, without changing their designated use, and without compensating for the damages and losses to agricultural production. [18] These projects do not align with the constitutional provisions regarding the special protection of lands and the provisions of Article 23 of the Zemel'nyy kodeks Ukrayiny regarding the priority of agricultural lands over other land categories.

The protection of land as a system of legal, organizational, economic, and other measures includes one of the most pressing and top-priority tasks of preserving agricultural and forest lands by preventing their unjustified withdrawal. To achieve this goal, compensation for losses of agricultural lands due to their removal from agricultural use has been introduced since 1962. In October 1991, the need to compensate for losses in forestry production was established. Norms for compensating losses have been established for each region based on the area of 1 hectare. Due to budgetary constraints, local councils financed the vast majority of land conservation measures using funds from these sources.

The exclusion of compensation for agricultural production losses from the legislation as per Law No. 2698-IX dated October 19, 2022, raises concerns. Its title, "Pro vnesennya zmin do deyakykh zakonodavchykh aktiv Ukrayiny shchodo vidnovlennya systemy oformlennya prav orendy zemel'nykh dilyanok sil's'kohospodars'koho pryznachennya ta udoskonalennya zakonodavstva shchodo okhorony zemel'" [18] not only lacks logic but also fails to relate to the improvement of legislation.

Without any justification or publication in the first reading of the bill, an additional legal norm was introduced for the second reading, which has existed in Ukraine for over 60 years and essentially remains the primary financial resource for land protection. Since forested lands are mostly state-owned, their protection is more reliable, and losses in forestry production are still covered by the Law. Agricultural lands, which are objects of special state security, have not found protection among the elected representatives.

Root improvement requires a system of land use control and protection. Since Ukraine's independence, starting with the Land Code as of March 13, 1992, state control was exercised directly by the People's Deputies Council, the State Committee of Land Resources (Derzhkomzem), the Ministry of Environmental Protection, and other authorized state bodies.[19] With the establishment of a unified system of land authorities in 1996, practical state control was carried out by Derzhkomzem and its territorial bodies. There was no local or public control at that time. There were also no separate bodies for land use control within Derzhkomzem. Later, the State Land Inspection and then the central supervisory (control) body in the agricultural sector, coordinated by the Ministry of Agrarian Policy, were established.

Changes to the Regulation on the Implementation of Public Control were made in October 2012 and were revoked in April 2021. At the same time, the provision regarding self-government control was removed from the Land Code.

Currently, state control is entrusted to the State Geocadastr (Derzhgeokadastr), and compliance with land protection legislation is overseen by the State Eco-Inspectorate (Derzhekoin-spektsiya). This control is also carried out by the executive committees of rural, township, and city councils, where they acquire authority when the respective council decides to conduct such control.

The existing control systems had several serious shortcomings. Primarily, the control was limited to checking land ownership and documentation. The fertility status of the soil, its dynamics, and soil cover monitoring were rarely conducted.

Local self-government bodies lacked legislatively defined tools to ensure effective control.

The delegation of powers to the State Geocadastré for the implementation of state control over activities within its scope (land management, state geocadastré, land protection, land and soil monitoring) lacks any logical consistency. Due to the absence of necessary land-use documentation, both quantitative and qualitative land accounting has been neglected. The current state of monitoring does not allow for analysis or the determination of forecast indicators for land use development. According to data from the State Statistics Service, between 2015 and 2020, the area of cultivated land increased by 216,000 hectares (0.26%). According to the Concept approved by the Cabinet of Ministers on January 19, 2022, it is planned to reduce the amount of arable land in Ukraine by 10.2 million hectares over a 10-year period.[2] During the decade from 2011 to 2020, the area of arable land decreased by 813,000 hectares.

Since January 1, 2016, the accounting of land quantities under Forms 6-zem and 2-zem has been discontinued. The quantitative accounting as envisaged by the new forms approved from July 1, 2016, is not being carried out. Without land monitoring and the accounting of their qualitative characteristics, there is no basis for managing soil fertility processes, land protection, land management, control over land use, and land protection. The State Inspection is unable to exercise full state control over compliance with land protection legislation.

The criticism also extends to the amendment of the law regarding the implementation of state control by the executive bodies of rural, township, and city councils only if the respective council decides to carry out such control. In the event that the council does not make this decision, it seems peculiar for the state to abstain from exercising control over a part of the country's territory, which amounts to shirking its national responsibilities. In this regard, the self-government control over land use and protection, which existed previously, was not contingent upon the council's decision to conduct or not conduct control. It was, in essence, universal. Furthermore, it was legally mandatory, and it should have been retained,

aligning the fundamental rights of local councils as entities of control with those of state authorities.

The possibility of implementing control by independent bodies is not ruled out, which could be achieved through the reorganization of the State Geocadastre or by excluding the provisions regarding the necessity of resolving control issues through the sessions of the relevant councils, significantly expanding their powers (Article 61).

The primary goal of both state and public control over land use and protection remains the preservation of the potential of agricultural agreements in the face of global climate change, further development of the land market, and decentralization of power, as well as the revival of production in the post-war period.

Conclusions

The absence of a system of regulatory acts, normative documents, especially norms and rules in the field of land management, norms for land protection, and soil fertility restoration, hinders the rational use and proper protection of land. Among them, a decisive role belongs to the specification of the legal foundations, principles, and provisions for implementing the constitutional requirement for special land protection as the country's main national asset. The creation of a unified land protection system with a central executive authority responsible for implementing state policy in the field of land relations and focusing on land management to create an economically and environmentally safe environment and promote the development of productive forces in the country should be considered the main tasks of land protection activities in the post-war period.

According to the Konstitutsiia Ukrainy, Zemel'noho kodeksu Ukrainy, Zakoniv Ukrainy "Pro zemleustrii", "Pro okhoronu zemel'", "Pro derzhavni tsil'ovi prohramy" land management documentation for forecasting and planning land use should include:

a nationwide target program for land use and protection;

regional programs for land use and protection in the autonomous republic of ARK and regions;

programs for land use and protection in the cities of Kyiv and Sevastopol;

land management schemes for administrative-territorial units;

land management schemes for the territories of territorial communities;

comprehensive plans for spatial development of the territory of territorial communities.

"State programs for economic, scientific-technical, social, national-cultural development, environmental protection, as stipulated by Article 85 of the Constitution of Ukraine, are approved by the Verkhovna Rada of Ukraine." [1] Therefore, their development is a constitutional obligation. The fundamental Law (Articles 116, 119, 138, 142) also regulates matters related to land relations, which are implemented by the Cabinet of Ministers, the Council of Ministers of the Autonomous Republic of Crimea, local self-government bodies, and executive authorities at the respective levels regarding the development of programs (schemes).

State and territorial programs, land use schemes of administrative districts, and territorial community areas must include sections on erosion control measures. Particularly relevant in times of a state of war and during the recovery period is the demining of territories, land reclamation of agricultural lands, and the use of technogenically polluted lands.

Preserving agricultural lands, their priority, and preventing unjustified land seizures require the revision of legislation regarding compensation for agricultural production losses.

Improving the land use monitoring system is impossible without the implementation of advanced information technologies and materials for remote Earth sensing.

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ПЛАНУВАННЯ ЗЕМЛЕКОРИСТУВАННЯ ТА ПРОБЛЕМИ КОНТРОЛЮ ЗА ВИКОРИСТАННЯМ І ОХОРОНОЮ ЗЕМЕЛЬ В УКРАЇНІ

Анотація. Анотація. Концепцією Загальнодержавної цільової програми використання та охорони земель, що схвалена Урядом у січні 2022 року визначено, що сучасний стан земельних ресурсів переважної частини країни характеризується як напружений, а подекуди - кризовий з тенденцією до погіршення. Однією з причин нераціонального використання земель є відсутність єдиної державної системи їх охорони.

У статті досліджуються проблеми удосконалення нормативно-правової бази особливої охорони земель відповідно до положень ст.14 Конституції України. Підкреслюється необхідність кодифікації норм чинного законодавства відповідно до вказаного конституційного припису та офіційного правового визначення цього терміну. Єдина система охорони земель повинна включати центральний орган виконавчої влади у галузі реалізації земельних відносин, повернути землеустрою соціально-економічні та екологічні функції збереження, раціонального використання та охорони земельно-ресурсного потенціалу, розроблення та реалізацію законодавчих нормативно-правових актів і нормативів щодо охорони земель, обґрунтовано систему обмежень землекористування, екологічного стимулювання та моніторингу земель.

Розглянуто стан наукових розробок прогнозування і планування землекористування та особливості складання прогнозної (передпроектної) документації із землеустрою. Аналізуються законодавчі зміни щодо збереження сільськогосподарських угідь та відміни оплати втрат

сільськогосподарського виробництва, обумовлених вилученням земель з обороту та погіршенням їх стану.

Обґрунтовано пропозиції щодо реформування системи контролю за використанням та охороною земель з зосередженням державного контролю в органі виконавчої влади, який є самостійним і не відповідає за реалізацію державної земельної політики, повернення місцевим радам функцій по здійсненню самоврядного контролю, зрівнявши їх повноваження з функціями державних органів щодо контролю за використанням і охороною земель, створення системи громадського контролю під егідою місцевих рад та територіальних громад.

Ключові слова: *прогнозування, планування, землекористування, особлива охорона земель, документація із землеустрою.*