

Abstract

This article provides an analysis of urban planning issues in the United States related to automobile-dependent regional sprawl and discusses the need for a metropolitan sustainable development governing framework for growth management in the twenty-first century. The paper discusses how unsustainable regional sprawl is now legally required throughout most metropolitan areas of the United States as a result of local zoning, growth management, and parking programs. The paper examines the potential benefits of creating a metropolitan governing framework to identify and regulate “growth areas” in a region and how linking these areas to regional transit planning is necessary to achieve the development of higher-density, mixed use, and intensive urban core job/housing areas where people could live, work, shop, and play without the use of the automobile. The paper further discusses some related lessons from Europe and discusses potential legal and political issues and institutional arrangements related to creating this type of regional sustainable development framework for urban planning in the United States.

The Case for Megapolitan Growth Management in the 21st Century: Regional Urban Planning and Sustainable Development in the United States*

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The overriding mandate in urban development today is not the development of efficient solutions to new and pressing city building needs. Rather, it is the colossal task of undoing the negative effects of almost three generations of planning priorities bred in an era that was gripped by great collective delusions about limitless growth. The new efficiency paradigm is aimed at curbing urban sprawl, oil gluttony and material waste, in a drive to offset the sheer momentum of a century of fossil affluence as burning, all encompassing aspiration.

Peter Droege, *The Renewable City* 131 (2006)¹

Metropolitan areas cannot resolve their challenges alone. Counties, cities, and suburbs operate within a national policy framework, and face challenges bigger than their own capacities. What's needed is a new partnership between federal, state, local, and private-sector players to help metropolitan areas build on their economic strengths, foster a strong and diverse middle class, and grow in environmentally sustainable ways.

The Brookings Institution, *Blueprint for American Prosperity* (2008)²

I. Introduction

Urban planning and control of land development is largely a function of local government both in the United States and in many (though not all) industrialized countries of the world. The United States Supreme Court's early landmark decision in 1926, *Village of Euclid, Ohio v. Ambler Realty Co.*,³ gave constitutional sanction to local comprehensive city zoning of urban development. Since that time, cities and counties at the local government level have continued to exercise primary governing jurisdiction in the United States over development of the built environment. This jurisdictional arrangement made eminent sense during most of the 20th century to nearly everyone involved in the urban development process. Development of the built environment was widely perceived (and still is by many) as largely, if not exclusively, impacting only

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¹ PETER DROEGE, *THE RENEWABLE CITY: A COMPREHENSIVE GUIDE TO AN URBAN REVOLUTION* 131 (2006).

² The Brookings Inst. *Blueprint for Am. Prosperity*, Publ'ns Page
<http://www.brookings.edu/projects/blueprint/publications.aspx> (last visited October 15, 2008).

³ 272 U.S. 365 (1926).

nearby neighborhoods and local community interests. This perspective on the limited public interest significance of urban development, however, may be decidedly changing.⁴

Most people in the United States do not live in major cities. Most Americans live, work, shop, and play in suburban areas, scattered about a metropolitan landscape far from any downtown urban core. We have become, as other affluent countries in Europe and Asia are becoming, a metropolitan (and increasingly megapolitan) nation. In the United States, the top 100 metropolitan areas are home to 65% of the nation's population (including 85% of the nation's immigrants and 77% of the nation's minorities) and those 100 regions generate two-thirds of the nation's jobs and three-quarters of the nation's economic GDP.⁵

Those largest 100 metro areas also contain over 9000 local governments and one-third of these metropolitan areas span state jurisdictional boundaries.⁶ Nearly all the growth in the years ahead in this country (perhaps 200 million additional people in the next 50 years) will be located in just 20 mega regions of the United States.⁷ Two out of three people in this country will live in these 20 mega regions by 2040.⁸ While we have become an increasingly megapolitan nation, we are just beginning to focus on addressing a number of serious, complex, and regional sustainable development problems.⁹ This

⁴ See URBAN ENERGY TRANSITION: FROM FOSSIL FUELS TO RENEWABLE POWER (Peter Droege, ed., 2008) (emphasizing the need for a regional approach to urban sustainable development issues).

⁵ BROOKINGS INST., METROPOLICY: SHAPING A NEW PARTNERSHIP FOR A METROPOLITAN NATION 4 (2008), available at http://www.brookings.edu/~media/Files/rc/reports/2008/06_metropolicy/06_metropolicy_fullreport.pdf.

⁶ *Id.* at 6.

⁷ Robert E. Lang & Arthur C. Nelson, *The Next 100 Million*, PLAN., Jan. 2007, at 4.

⁸ Robert E. Lang & Arthur C. Nelson, *America 2040: The Rise of the Megapolitans*, PLAN., Jan. 2007, at 7 (“Megapolitan areas represent an even greater concentration of the nation's wealth and productive capacity. The 10 most affluent major metropolitan areas lie in megas, as do most of the nation's busiest air and sea ports. The megas are the key zones by which the U.S. integrates into the global economy. It is almost impossible to fly overseas without first stopping in a megapolitan area.”).

⁹ See, e.g., JONATHAN BARNETT ET AL., SMART GROWTH IN A CHANGING WORLD (Jonathan Barnett, ed., 2007).

article discusses the need in the United States for a regional institutional arrangement that implements a megapolitan growth management policy.

As cities, as well as state and national governments, both in the United States and throughout the world, begin to address an array of problematic sustainable development issues, a paradigm shift in the framework of governing responsibilities seems likely to occur. Local urban planning and zoning controls, as well as related public and private infrastructure and transportation investments, are all likely to operate, in the years ahead, within, and in support of, an overriding larger state and national sustainable development policy framework. Attempts at systemic and structural urban planning policy reform at the metropolitan and megapolitan levels seem inevitable. Given the enormous future growth projected for the United States, both in the country's population and in its built environment, questions about broader regional governing arrangements may really be more of merely timing and degree, of the devising and analysis of potential metropolitan institutional forms and arrangements, not if, but simply when and how this transformation occurs.

Questions related to the competence and efficacy of existing institutions and governing arrangements are at the heart of any analysis of sustainable development problems.¹⁰ Adjustments in institutional governing arrangements related to urban planning, housing, energy, and supporting transit and infrastructure development are now increasingly advocated as an antidote to the problems of automobile-dependent regional sprawl.¹¹ Proposals for metropolitan, regionally-coordinated (even megaregionally-

¹⁰ See, e.g., KENT E. PORTNEY, *TAKING SUSTAINABLE CITIES SERIOUSLY: ECONOMIC DEVELOPMENT, THE ENVIRONMENT, AND QUALITY OF LIFE IN AMERICAN CITIES* (2003); JANE SILBERSTEIN & CHRIS MASER, *LAND-USE PLANNING FOR SUSTAINABLE DEVELOPMENT* (2000); *SUSTAINABLE CITIES: JAPANESE PERSPECTIVES ON PHYSICAL AND SOCIAL STRUCTURES* (Hidenori Tamagawa, ed., 2006).

¹¹ See, e.g., BARNETT ET AL., *supra* note 9; DROEGE, *supra* note 1; REID EWING ET AL., *GROWING COOLER: THE EVIDENCE ON URBAN DEVELOPMENT AND CLIMATE CHANGE* (2008); see also Federico Cheever et al., Opinion, *What Will it Take for a Really Green Denver?*, DENVER POST, Jul. 30, 2006, available at http://www.denverpost.com/perspective/ci_4104578 ("Intelligently planned higher density development can create a rich fabric of mixed uses, an expanded range of

coordinated) approaches to urban planning policy, both in the United States and elsewhere in the world, appear to be based on the following perceptions: (1) the increasing recognition of the unsustainability of low-density, automobile-dependent regional sprawl; (2) the increasing recognition that local individual low-density zoning, parking, and growth management programs are a significant cause of regional automobile-dependent sprawl, dominated as they are, especially in the United States, by local parochial NIMBY (not in my back yard) and city fiscal concerns; and (3) an increasing awareness of the critical importance of urban planning and related public and private built environment, transportation, and infrastructure investment decisions to resource and energy consumption.¹²

There also is a growing awareness that better designed and higher-density residential development can have enormous economic benefits in this country.¹³ This relates to the emerging role of urban planning as an ever increasing “efficiency link” to the future economic prosperity of the country’s metropolitan areas.¹⁴ As Richard Florida has pointed out in his recent work:

transportation choices for all ages and high housing values. We will be happier, healthier, richer, more efficient and more environmentally friendly if there are more of us per square mile.”).

¹² See, e.g., TIMOTHY BEATLEY, *GREEN URBANISM: LEARNING FROM EUROPEAN CITIES* 3-4 (1999); URBAN ENERGY TRANSITION: FROM FOSSIL FUELS TO RENEWABLE POWER (Peter Droege, ed., 2008); EDWARD H. ZIEGLER, *China’s Satellite Cities, Regional Growth, and Sustainable Development – Urban Planning, Energy, and the Automobile*, in *SUSTAINABLE URBAN DEVELOPMENT IN CHINA: WISHFUL THINKING OR REALITY?* 51 (Marco Keiner, ed., 2008); John Mogge, *Masdar City: Test Site for Living Without Cars*, Q. PLANET, June 2008, at 4; Dennis Normile, *China’s Living Laboratory in Urbanization*, 319 SCI. 740 (2008); Neal Peirce, *Plan or Be Engulfed: Harsh Lesson for World Cities*, NATION’S CITIES WKLY., Aug. 6, 2007, at 2; Edward H. Ziegler, *Developing Greener Cities in China*, URBAN LAND, Feb. 2006, at 48 (hereinafter Ziegler, *Developing Greener Cities*).

¹³ BARNETT ET AL., *supra* note 9, at 33 (“In addition to the environmental ramifications of sprawling land use, the economic impacts—and their potentially troubling implications for the sustainability of American competitiveness in the coming decades—are profound. The drain on the American economy is manifested in a number of ways, from strained municipal and household budgets to reduced worker productivity.”).

¹⁴ See BROOKINGS INST., *supra* note 4; PETER CALTHORPE & WILLIAM FULTON, *THE REGIONAL CITY* (2001); BARNETT ET AL., *supra* note 9. “Sprawl imposes great costs upon a community, and local growth controls prove largely ineffective in reducing the ills of growth. Indeed, the absence of regional

[O]ur public policy must work toward, not against, density. Nearly every expert on the subject agrees that innovation and productivity are driven by density. For the better part of a century, we've subsidized suburbanization. That stimulated consumption of cars and appliances, which drove the industrial economy and allowed families to buy affordable homes. But it also diffused the density that is increasingly required for innovation and growth. Of course, every place does not have to be like Tokyo or Manhattan. Silicon Valley-style density would probably be sufficient. We can still have suburbs, but our economic policy has to start to encourage density, not sprawl.¹⁵

In short, there is growing awareness of the important role that coordinated urban planning policy at the metropolitan level can play in creating higher-density and

coordination of growth can be damaging to a community and its neighbors, and inadvertently increase sprawl in the region as a whole." See also Katharine J. Jackson, *The Need for Regional Management of Growth: Boulder, Colorado as a Case Study*, 37 URB. LAW. 299, 317 (2003):

Some proponents of regional regulation maintain that the current system of local government regulation "leads to a tragedy of the commons within a metropolitan area." Because local controls apply to only one jurisdiction, sprawl is encouraged "by forcing developers to set their sights on green spaces farther and farther from the urban core." In the example of Boulder, Colorado, the city's efforts to restrict development to prevent sprawl within its city limits have caused neighboring communities to strive to attract development, thereby encouraging sprawl in the region as a whole.

¹⁵ Richard Florida, Opinion, *The Rise of the Mega-Region*, WALL ST. J., Apr. 12, 2008, at A8. See also Edward H. Ziegler, *American Cities, Urban Collapse, and Environmental Doom* 60 PLAN. & ENVTL. L. 7, 9 (2008) (hereinafter Ziegler, *American Cities*):

Urban planning today is clearly no longer a matter a purely local concern. It's a legal-structural problem of governing authority commensurate with the magnitude of the regional and global problems that have to be addressed. For a variety of reasons, local governments are good at talking the talk but not at actually walking the walk in these areas. Their lead role in this field needs to be substantially tempered by national and state green development policies.

prosperous urban core areas as a path to building sustainable communities in the twenty-first century.¹⁶

II. Problems of Regional Automobile-Dependent Sprawl

The problems of automobile-dependent regional sprawl were largely perceived during the twentieth-century as “quality-of-life” issues such as the absence of human scale and walkability in our extended built environment, the lack of any real sense of place or of charming public places, the unappealing garage-door architecture and extensive parking lot landscapes, the traffic congestion, the loss of places friendly to children and the elderly, and the loss of nearby open space and wildlife habitat.¹⁷ While these all are problems still associated with sprawl, they now seem only the most obvious in view of the even more serious problems associated with automobile-dependent sprawl in our twenty-first century.

¹⁶ See EWING ET AL., *supra* note 11. See also Ziegler, *American Cities*, *supra* note 12, at 8:

Higher density and less automobile-dependant development is not only GREEN but makes increasing economic sense as we move in this century toward building a sustainable future. It will also result in the building of truly world class American cities. Fortunately, the fastest growing segment of the residential real estate market is for higher density, mixed use, and less auto-dependant development. In a very real sense, reducing sprawl is about increasing private choice in lifestyle, spending, and transportation, choices that government needs to facilitate rather than limit. It’s also about the adoption of government policies that reflect the real human, energy, and environmental costs of sprawl.

¹⁷ See generally PETER CALTHORPE, *THE NEXT AMERICAN METROPOLIS: ECOLOGY, COMMUNITY AND THE AMERICAN DREAM* 9 (1995); ANDRES DUANY ET AL., *SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM* 4 (2000); ROBERT FISHMAN, *BOURGEOIS UTOPIAS: THE RISE AND FALL OF SUBURBIA* 16-17 (1987); JOEL GARREAU, *EDGE CITY: LIFE ON THE NEW FRONTIER* (1991); JAMES KUNSTLER, *THE GEOGRAPHY OF NOWHERE: THE RISE AND DECLINE OF AMERICA’S MAN-MADE LANDSCAPE* 10 (1993); Robert W. Burchell, *The Evolution of the Sprawl Debate in the United States*, 5 HASTINGS W.-N.W. J. ENV’T. L. & POL’Y 137 (1999); Patrick Gallagher, *The Environmental, Social and Cultural Impacts of Sprawl*, 15 NAT. RESOURCES & ENV’T. 219 (2001); Michael Lewyn, *Suburban Sprawl: Not Just an Environmental Issue*, 84 MARQ. L. REV. 301 (2000); Francesca Ortiz, *Biodiversity, The City and Sprawl*, 82 B.U. L. REV. 145 (2002).

Consider these growing and more serious costs. Scientists now believe that we can expect global warming and devastating climate change during this century, largely due to carbon emissions from the burning of fossil fuels.¹⁸ Nearly all energy in the United States comes from fossil fuels (over 85%), primarily oil, coal, and natural gas.¹⁹ This country has the highest per capita consumption of fossil fuels in the world and fossil fuels, particularly cheap oil, are the primary fuels powering automobile-dependent sprawl in the United States.²⁰ The per-capita consumption of gasoline in this country is four times that of European drivers and nearly ten times the amount of Asian drivers.²¹

Our decentralized, automobile-dependent pattern of regional land development increases the urban footprint at several times the rate of population growth. This is true even in areas near such transit-friendly cities (by American standards) as Chicago, Boston, and Washington D.C. For example, the Chicago area between 1982 and 1997 had

¹⁸ See EUR. SPATIAL PLAN : ADAPTING TO CLIMATE EVENTS, PLANNING IN A CHANGING CLIMATE: THE STRATEGY 1 (2007), available at <http://www.espace-project.org/part1/publications/SPACE%20Stategy%20Final.pdf>; DAVID G. VICTOR, CLIMATE CHANGE: DEBATING AMERICA'S POLICY OPTIONS 1 (2004).

¹⁹ See ENERGY INFO. ADMIN., ANNUAL ENERGY REVIEW 2007 at 9 (2007), available at <http://www.eia.doe.gov/emeu/aer/pdf/aer.pdf>; BRUCE PODOBNIK, GLOBAL ENERGY SHIFTS: FOSTERING SUSTAINABILITY IN A TURBULENT AGE (2006).

²⁰ BARNETT ET AL., *supra* note 9, at 25-27:

One inevitable by-product of all the fossil fuel consumption brought on by increasing automobile dependence is the emission of carbon dioxide, a potent greenhouse gas. According to data from the federal Departments of Transportation and Energy, transportation in the U.S. produces over 450 million metric tons of carbon dioxide each year, about a third of all U.S. carbon emissions. Total U.S. carbon emissions have been growing at an average rate of about one percent per year, with transportation sources growing around 20 percent faster than the total. Carbon emissions per capita in the U.S. are nearly double those in Europe.).

“Although improvements in fuel and vehicle technology can help, land-use and transportation planning that reduces vehicle demand is crucial, especially in light of population growth, if we are to achieve these goals.” Lawrence Frank et. al, *The Urban Form and Climate Change Gamble*, PLAN., Aug./Sep. 2007, at 18, 19.

²¹ *Id.*

a 9.6 percent increase in population but had a 25.5 percent increase in urbanized land.²² During that same period, Boston's metro population increased by 6.7 percent, but its urban land area increased by 46.9 percent.²³ Since 1980, the number of vehicle miles driven by Americans has grown three times faster than the nation's population.²⁴ As a result of automobile use, the United States (which has less than five percent of the world's population) accounts for about 25% of global oil consumption and about 45% of the world's GHG emissions from automobiles.²⁵ Our economy is completely oil-dependent, which renders it particularly vulnerable to fluctuations in oil price and supply. Any significant interruption of foreign oil imports (which account for over 60% of the United States' consumption) would be potentially devastating to our economy.²⁶

Over 80% of the oil consumed in the United States goes toward transportation (mostly the driving of cars and trucks) and automobile travel is our single largest consumer source of green house gas emissions (about a third of our total GHG emissions).²⁷ Moreover there is little prospect of all this changing in the near future. Each year, the consumption of fossil fuels, particularly oil, increases in the United States largely as a result of population growth, an increased built environment of homes, offices,

²² Ziegler, *American Cities*, *supra* note 12.

²³ *Id.*

²⁴ EWING ET AL., *supra* note 11, at 21; BARNETT, ET AL., *supra* note 9, at 22: "A number of troubling additional trends are associated with the growth of vehicle use in recent decades, all pointing to increased inefficiency in travel patterns. These include an increase in average trip length, growth in the number of vehicle trips taken per person and per household per year, a decline in all modes of travel other than single-occupancy driving, and a decline in average vehicle occupancy."

²⁵ EWING ET AL., *supra* note 11, at 23.

²⁶ PAUL ROBERTS, *THE END OF OIL: ON THE EDGE OF A PERILOUS NEW WORLD* (2004).

²⁷ EWING ET AL., *supra* note 11, at 17; Edward H. Ziegler, *China's Cities, Globalization, and Sustainable Development: Comparative Thoughts on Urban Planning, Energy, and Environmental Policy*, 5 WASH. U. GLOBAL STUD. L. REV. 295, 313 (2006).

and businesses, increased vehicle miles traveled, and the 3 million additional automobiles each year that are added to this nation's roads.²⁸

Infrastructure costs supporting this dispersed landscape also are enormously expensive. As it turns out, the suburbanization of America's metropolitan landscape has been made affordable only by avoiding any consideration of life-cycle pricing for this country's automobile-related infrastructure costs. The United States has nearly a \$2 trillion infrastructure maintenance deficit that increases by an estimated \$100 billion each year.²⁹ We are passing along to the next generation an infrastructure of bridges, highways, tunnels, viaducts, rail lines, port facilities, levies, and transmission grids that are all badly in need of replacement or repair. There are, for example, 70,000 bridges in the United States that are now rated "structurally deficient."³⁰ Despite this deficiency in

²⁸ OFFICE OF HIGHWAY POLICY INFO., U.S. DEP'T OF TRANSP., *OUR NATION'S HIGHWAYS* 11 (2000), available at http://www.fhwa.dot.gov/ohim/onh00/our_ntns_hwys.pdf; Ziegler, *supra* note 27, at 307-08. DROEGE, *supra* note 1, at 61:

Cities play a central role in fossil-fuel consumption, and at the same time have significant capacities to introduce important energy policy changes. Hence, to a great extent global climate change is related to the local actions of urban communities, to how they build and manage their infrastructures, facilities and urban settings, what they consume, and how they dispose of their waste. And due to their collectively constructed and highly managed nature, cities are also the most sensitive elements of the national and global economy. It is critical that urban communities are both ready for the changes these global environmental impacts will bring, and aware of their power and responsibility to be prepared for discontinuous change – and to help slow and ultimately halt further global, fossil-fuel driven environmental deterioration..

²⁹ AM. SOC'Y OF CIVIL ENG'RS, *REPORT CARD FOR AMERICA'S INFRASTRUCTURE 2003 PROGRESS REPORT: AN UPDATE TO THE 2001 REPORT CARD* 7 (2003), <http://www.asce.org/reportcard/pdf/fullreport03.pdf>.

³⁰ BRUCE KATZ ET AL., *AMERICA'S INFRASTRUCTURE: RAMPING UP OR CRASHING DOWN*, CONFERENCE REPORT #21 at 1 (2008), available at http://www.brookings.edu/~media/Files/rc/papers/2008/01_infrastructure_katz_puentes/01_infrastructure_katz_puentes.pdf; Christopher Conkey et al., *Bridge Collapse Could Spur Infrastructure Fixes*, WALL ST. J., Aug. 3, 2007, at B1, available at http://online.wsj.com/article/SB118609911628386782.html?mod=hpp_us_whats_news.

largely road-related infrastructure maintenance, no country spends more per capita on transportation than the United States.³¹ If not further repaired or maintained, much of the transportation and utility related infrastructure in many regions of the country will simply collapse in the course of the twenty-first century.³²

Urban sprawl also contributes to the deteriorating economic condition and livability of many core areas of major cities and towns. In some cases, outward urban expansion has had a devastating impact on core urban areas. In the last decade alone, 28,000 houses were razed in Detroit, a city that has lost half of its population since 1950.³³ Recent census data show that many major cities are continuing to lose population.³⁴ This cycle of outward expansion and inner deterioration is now operating in older suburban areas. There are now an estimated four thousand abandoned shopping malls in this country, many of which are located in older suburban areas impacted by ever-expanding outward development.³⁵

Since 1950, about 2.5 million Americans have been killed in automobile accidents (that's over twice the number of America's battle deaths in all this country's wars combined) and untold millions of people have been permanently disabled or seriously injured on America's roads.³⁶ Increasing traffic congestion and air pollution from autos

³¹ URBAN ENERGY TRANSITION: FROM FOSSIL FUELS TO RENEWABLE POWER, *supra* note 12, at 215.

³² ROBERT PUENTES, A BRIDGE TO SOMEWHERE: RETHINKING AMERICAN TRANSPORTATION FOR THE 21ST CENTURY (2008), *available at* http://www.brookings.edu/~media/Files/rc/reports/2008/06_transportation_puentes/06_transportation_puentes_report.pdf.

³³ See Jodi Wilgoren, *Detroit Urban Renewal Without the Renewal*, N.Y. TIMES, July 7, 2002, at A10, *available at* <http://query.nytimes.com/gst/fullpage.html?res=9F05E6DF1F31F934A35754C0A9649C8B63>.

³⁴ See Paul Overberg, *Top 75 Cities Ranked by Population in USA*, USA TODAY, July 10, 2008, at 2A, *available at* http://www.usatoday.com/printedition/news/20080710/a_cencitylist10.art.htm.

³⁵ Richard Moe, President, Nat'l Trust for Historic Preservation, An Address Presented at San Joaquin Valley Town Hall Fresno, California, Growing Smarter: Fighting Sprawl and Restoring Community in America (Nov. 20, 1996) (transcript available at http://www.smartgrowth.org/library/Richard_Moe.html).

³⁶ FED. HIGHWAY ADMIN., HIGHWAY STATISTICS SUMMARY TO 1995 tbls.Fi200, Fi201 (1997), *available at* <http://www.fhwa.dot.gov/ohim/summary95/section5.html>; U.S. DEPT. OF TRANS., FATALITY ANALYSIS REPORTING SYSTEM GENERAL ESTIMATES SYSTEM: 2006 DATA SUMMARY 5 (2008), *available at*

are linked to a range of pulmonary, coronary, and neurological diseases, such as asthma, cancer, heart disease, strokes, birth defects, and brain disease.³⁷ Researchers also are examining the link between the sedentary lifestyles of our automobile culture and increasing rates of obesity and diabetes throughout the United States.³⁸ High rates of land urbanization and land clearing are significant sources of GHG emissions and intensive automobile use is a significant cause of water pollution problems throughout this country.³⁹ This is all a high price to pay for what is becoming an increasingly expensive, inconvenient, and congested form of travel.

Together, rising oil prices, worsening traffic congestion, and a crumbling infrastructure pose a serious threat to continuing economic prosperity in the United States. Already we spend about 6 billion person hours stuck in traffic each year (at an estimated \$60 billion loss in economic productivity).⁴⁰ Worker economic productivity in the United States now has fallen significantly behind that of Europe.⁴¹ By a large measure, the United States consumes more oil than any other country in the world.⁴² Higher oil prices will make most of us poorer through rising prices for gasoline, food, commodities, building materials, pharmaceuticals, computers, and nearly all consumer products and services. Rising prices, moreover, will slow job creation, decrease investment, dampen consumer spending, and act as a drain on economic growth. Its impact also will likely be far greater in the United States than in Europe or Asia given this nation's hyper-sprawl landscape and high rate of oil consumption.⁴³

<http://www-nrd.nhtsa.dot.gov/pubs/2006%20DATA%20Summary.pdf>; NAT. HIGHWAY TRAFFIC SAFETY ADMIN., TRAFFIC SAFETY FACTS: 2007 TRAFFIC SAFETY ANNUAL ASSESSMENT – HIGHLIGHTS (2008), available at <http://www-nrd.nhtsa.dot.gov/Pubs/811017.pdf>; Ziegler, *supra* note 12; FED. ANALYSIS REPORTING SYSTEM, ENCYCLOPEDIA, NATIONAL STATISTICS: TABLE UPDATED WITH 2006 FINAL DATA AND 2007 ANNUAL DATA, <http://www-fars.nhtsa.dot.gov/main/index.aspx>.

³⁷ BARNETT ET AL., *supra* note 9.

³⁸ *Id.*

³⁹ *Id.*; DROEGE, *supra* note 1, at 61.

⁴⁰ See Bob Tedeschi, *CYBER SCOUT: Monitoring Traffic*, N.Y. TIMES, July 20, 2003.

⁴¹ BARNETT ET AL., *supra* note 9.

⁴² ROBERTS, *supra* note 26.

⁴³ See Pat Minczeski et al., *Tighter Spigots*, WALL ST. J., Jan. 3, 2008, at A7.

Automobile travel is likely to become increasingly expensive and unaffordable for many households in the United States. Households may now spend nearly 20-35% of their income on automobile transportation.⁴⁴ As the world oil supply peaks and demand continues to grow, automobile-dependent landscapes will become unsustainable. Consider that in 1997 the United States was spending \$1 billion a week for oil, and today, at \$4 a gallon for gasoline, this country is close to spending \$2 billion *a day* for oil.⁴⁵ Depending on how fast the price of oil rises, there is the real potential for urban and economic collapse both in the United States and other industrialized nations of the world.⁴⁶ Already, energy and food protests and violent riots have occurred in dozens of countries throughout the world.⁴⁷ Oil prices in the years ahead may pose the most serious threat to the stability and growth of America's middle class since the Great Depression of the twentieth century.⁴⁸

III. The Future of Regional Metropolitan Areas

⁴⁴ BARNETT ET AL., *supra* note 9.

⁴⁵ John Felmy, Chief Economist, Am. Petroleum Inst., Remarks before the United States Energy Association (Jan. 17, 2006) (transcript available at <http://www.api.org/Newsroom/testimony/state-of-industry.cfm>).

⁴⁶ See PODOBNIK, *supra* note 19; VACLAV SMIL, *ENERGY AT THE CROSSROADS: GLOBAL PERSPECTIVES AND UNCERTAINTIES* (2003); *see also* Ziegler, *American Cities*, *supra* note 12, at 8:

The economist Rudiger Dornbusch once noted: 'The crisis takes a much longer time coming than you think and then it happens much faster than you would have thought.' There is growing support for the idea that Dornbusch's observation may be particularly true with respect to the impact of rising oil prices in this country. Perhaps there is a lesson in the news that high energy prices this year resulted in urban riots in six different countries around the world. Interest rates, inflation, foreign investment, a weakening dollar, and severe hurricanes are all variables that could hasten the impact of rising oil prices in this country and cause this to happen sooner rather than later here.

⁴⁷ See Chip Cummins, *As Fuel Prices Soar, A Country Unravels*, WALL ST. J., Nov. 18-19, 2006, available at <http://online.wsj.com/article/SB116382622763227277.html>.

⁴⁸ See MORRIS BERMAN, *DARK AGES AMERICA: THE FINAL PHASE OF EMPIRE* (2006); ROBERTS, *supra* note 26.

Local zoning and growth management programs have operated in the United States largely to expand this low-density pattern of regional sprawl and accelerate this country's resource and energy consumption.⁴⁹ Zoning almost by definition is exclusionary in nature, and this is, and has been, true even in many of America's major cities. Excluded development often simply locates (sprawls) further out away from an urban core area. Sprawl, in this respect, is the product of the very visible hand of local government urban planning policy.⁵⁰ Cities that tout their Green Development initiatives, at least, should be honest enough to count their "zoning policy" responsibility for their "exclusion-driven GHG emissions" from the automobile driving of workers in the city who must find housing elsewhere and from their own city residents who need to drive elsewhere to find jobs.⁵¹

A recent state court zoning decision in the United States involved the application of an "as the crow flies distancing requirement" that prohibited any form of planned multi-unit housing from locating within one mile of any similar housing within the community.⁵² This is the kind of thing that too often passes for "urban planning" in America's local communities. Andres Duany and Peter Calthorpe, both well-known critics of local zoning and proponents of less automobile-dependent New Urbanism, have for years noted the need for growth management in a broader metropolitan context.⁵³ As Andres Duany points out:

Regional planning manages growth at the scale of people's daily lives. Planning at the scale of a single town or city is rarely effective, because working and shopping patterns routinely take most people across municipal lines. What good is it for a New England village to outlaw Wal-Mart to save

⁴⁹ See Edward H. Ziegler, *Urban Sprawl, Growth Management and Sustainable Development in the United States: Thoughts on the Sentimental Quest for a New Middle Landscape*, 11 VA. J. SOC. POL'Y & L. 26 (2003).

⁵⁰ See *id.*

⁵¹ See *id.*; Jackson, *supra* note 11.

⁵² See *Trumbull Falls, LLC v. Planning and Zoning Comm'n of Town of Trumbull*, 902 A.2d 706, 714-15 (Conn. App. Ct. 2006).

⁵³ See CALTHORPE & FULTON, *supra* note 14; DUANY ET AL., *supra* note 17.

its main street when the suburb town down the highway welcomes it with open arms? Any municipality that tries to limit sprawl typically risks the loss of its tax base to surrounding towns. Only at the regional scale can planning have a meaningful impact.⁵⁴

This, of course, has been no secret to those familiar with local zoning and growth management programs. Years ago, critics such as Richard Babcock, Anthony Downs, and Robert Freilich pointed out how local, low-density zoning and growth management programs have the effect of scattering development throughout a metropolitan region.⁵⁵ It is a point often repeated in the literature.⁵⁶ Our regional problem today is that the strong arm of NIMBYism has turned the gentility of old “snob zoning” schemes into zoning schemes that perhaps can best be described as “hyper exclusion on steroids.” We live in a world where everything but (and sometimes even including) low-density, high-end housing is considered a LULU (a locally unwanted land use).⁵⁷

Typically, concerns about growth within a local community follow a certain political dynamic. In newly developing areas, existing residents and businesses often initially welcome growth, as it brings with it appreciating land and property values, new business, and some desirable amenities, such as additional shopping, restaurants, or recreational opportunities. Soon, however, if there is rapid growth, this local pro-growth attitude turns to ambivalence as both old and new residents begin to encounter the negative impacts of continued growth and automobile-dependent sprawl. NIMBYism at some point begins to dominate both the public’s perception of future growth and the politics of the local planning and zoning process.⁵⁸

⁵⁴ DUANY ET AL., *supra* note 17, at 139.

⁵⁵ Richard Babcock, *The Egregious Invalidity of the Exclusive Single-Family Zone*, LAND USE LAW L. & ZONING DIG., Jul. 1983, at 4; ANTHONY DOWNS, NEW VISIONS FOR METROPOLITAN AMERICA (1995); ROBERT H. FREILICH, FROM SPRAWL TO SMART GROWTH: SUCCESSFUL LEGAL, PLANNING, AND ENVIRONMENTAL SYSTEMS (2000).

⁵⁶ See Ziegler, *supra* note 49.

⁵⁷ See *id.*

⁵⁸ JAMES H. KUNSTLER, HOME FROM NOWHERE 112 (1996):

Eventually, anti-growth sentiment develops to the point where nearly everyone but the realtors' lobby has been turned into a BANANA (Build-Absolutely-Nothing-Anywhere-Near-Anybody). Land use "activists" and civic-minded neighborhood organizations now emerge with the goal of promoting growth management and the "public interest" (often under the banners of "environmental protection" and "fighting sprawl") and pressure the city to enact increasingly intensive and burdensome zoning and growth management programs. The growth and development that is excluded from that community usually ends up locating further out in more rural, less developed communities that have a pro-growth attitude, less burdensome land use restrictions, and where land is, in any case, cheaper.⁵⁹

Local zoning and growth management programs are adopted to address quality-of-life issues within a particular local community. Within that community, land use controls may attempt to deal, at least in part, with the internal problems of scattered, haphazard, and inappropriate development. Local zoning and growth management programs are typically low-density and exclusionary in nature, and therefore, they typically have the effect of legally requiring regional sprawl. This has been, and continues to be, a well-recognized and important dynamic of local growth, zoning practice, and regional sprawl in the United States.⁶⁰

According to a recent report on regional sprawl in the Washington, D.C., metropolitan area, for example, more than half of the land in the outer areas is protected

So the suburbanites become NIMBYs (Not In My Back Yard) and BANANAs (Build Absolutely Nothing Anywhere Near Anything). If they're successful in their NIMBYism, they'll use their town government to torture developers (i.e., people who create growth) with layer upon layer of bureaucratic rigamarole, so that only a certified masochist would apply to build something there. Eventually, all this unwanted growth leap-frogs over them to cheap, vacant, rural land farther out (controlled by politicians hungry for "rateables"), and then all the new commuters in the farther-out suburb are choking the NIMBY's roads anyway to get to the existing mall in NIMBYville.).

⁵⁹ See KUNSTLER, *supra* note 58; Douglas R. Porter, *Reinventing Growth Management for the 21st Century*, 23 WM. & MARY ENVTL. L. & POL'Y REV. 705.

⁶⁰ See DANIEL P. SELMI ET AL., *LAND USE REGULATION: CASES AND MATERIALS* 57-59 (3d ed. Aspen Publishers 2008); Jackson, *supra* note 11; Ziegler, *supra* note 49.

from typical tract suburban development by various zoning and growth-management programs that require lot sizes of three acres to twenty-five acres of land to build a house. While these limits on rural building are supposed to be saving farmland, forests, and meadows, a regional view of development patterns indicates that many of these anti-sprawl measures have accelerated the consumption of woods and fields and pushed developers outward in their search for home sites.⁶¹

The sprawling expansion of the nation's metropolitan areas into outer rings of further development depletes land in a natural state (trees and vegetative cover serve as important carbon sinks reducing GHG emissions), increases air and water pollution and requires major investments in transportation, sewer, water supply, and wastewater infrastructure to diminish growth-related environmental harm. It also enormously increases the consumption of oil and the emission of green house gases from automobiles. Dan Silver, head of the Los Angeles-based Endangered Habitats League, has suggested that environmentalists consider adopting a policy that attempts to direct development into core urban areas rather than pursue a no-growth-anywhere strategy.⁶² He points out that rather than preventing growth, the traditional anti-sprawl lawsuit simply diverts development into another neighborhood or outer suburbs.⁶³

The rate of land urbanization in the United States may be three or four times the rate of population growth.⁶⁴ Considering the enormous population growth and expansion of the built environment that is projected for the United States, things are likely to get worse before they get better.⁶⁵ Recent reports on growth in the United States suggest that the country's population, which reached 300 million people in 2006, could increase by another 100 million people by 2035, by an additional 150 million people by 2050, and perhaps by an additional 300 million people by the end of this century.⁶⁶ People studying population and demographic changes in relation to development of the built environment,

⁶¹ See Peter Whoriskey, *Density Limits Only Add to Sprawl*, WASH. POST, March 9, 2003, at A01.

⁶² *New Greens Focus Growth, Not Fight It*, GROWTH/NO GROWTH, Mar. 2003.

⁶³ *Id.*

⁶⁴ Robert Geddes, *Metropolis Unbound: The Sprawling American City and the Search for Alternatives*, AM. PROSPECT, Nov./Dec. 1997, at 40.

⁶⁵ See Ziegler, *Developing Greener Cities*, *supra* note 12, at 8.

⁶⁶ See Lang & Nelson, *supra* note 7; Lang & Nelson, *supra* note 8.

moreover, believe that the trend toward decentralization of America's metropolitan areas will likely continue in the years ahead.⁶⁷

Population growth in the United States is projected to dramatically increase resource and energy consumption. No amount of recycling, inflating our tires, turning off the lights, or cloth bagging our groceries will likely be sufficient to conserve our way out of this situation.⁶⁸ Consider these projections. To accommodate this growth during just the next forty years, this country will need to build perhaps 100 million new housing units and construct more new nonresidential development than all of that development that now exists in this country. If this growth occurs, two-thirds of the buildings that will exist in the United States by 2050 will have been built after the year 2000.⁶⁹ Also, at the present annual rate of increase in automobiles, the United States in 40 years could easily have more than 100 million more automobiles congesting the country's roads.⁷⁰

IV. A Megapolitan Framework for Growth Management

⁶⁷ *Id.*

⁶⁸ See Ziegler, *supra* note 27; see also EWING ET AL., *supra* note 11, at 33: (citations omitted):

A recent article in the *Journal of the American Planning Association* began with the following words: 'More than half of the built environment of the United States we will see in 2025 did not exist in 2000, giving planners an unprecedented opportunity to reshape the landscape.' Between 2005 and 2050, the number of residential units of all types may grow from 124 million to 176 million, or a total of 52 million. In addition, roughly 6 percent of the housing stock of the previous decade is replaced each decade, with about two-thirds being rebuilt on site and another third consisting of new units built elsewhere because of land use conversions (such as a strip mall replacing houses, with the displaced homes rebuilt elsewhere). Counting compounding effects, perhaps 37 million homes will need to be replaced entirely through conversion processes between 2005 and 2050. The number of new plus replaced residential units may reach 89 million units between 2005 and 2050, or more than 70 percent of the stock that existed in 2005.

⁶⁹ Lang & Nelson, *supra* note 7; Lang & Nelson, *supra* note 8.

⁷⁰ OFFICE OF HIGHWAY POLICY INFO., U.S. DEP'T OF TRANSP., *supra* note 28, at 10.

The American scheme of local control of land development through exclusionary and low-density zoning regimes is increasingly recognized as a significant cause of expanding and unsustainable regional sprawl.⁷¹ In some American communities in the path of suburban development, local zoning may legally restrict density to not more than 20 residential dwellings per square mile (about 1 house per 35 acres of land).⁷² This is not “urban planning” but planning that avoids urbanization and that guarantees regional sprawl. Contrary to popular myth, this “open-space” form of zoning is not constitutionally required to protect the property rights of owners.⁷³ It is simply traditional zoning’s myopic response to the NIMBY notion of “land conservation.” Yet, urban planning is increasingly recognized as a potentially critical tool for addressing many of our regional problems that result from sprawl.⁷⁴ The twentieth-first century dilemma here is how to turn local urban planning and zoning, which is a large part of this county’s sustainability problem, into a tool for sustainable metropolitan growth.⁷⁵

In the United States, about 75% of our energy consumption is attributable to buildings (48%) and transportation (27%), two potentially key elements in a sustainable

⁷¹ See Ziegler, *supra* note 49.

⁷² The density restriction of one residential unit per thirty-five acres of land is found in some developing suburban areas. Boulder County, Colorado, for example, imposes this density restriction in its agricultural zones, some of which are directly in the path of suburban development northwest of Denver. See BOULDER COUNTY, COLO., LAND USE CODE art. 4, § 4-100, *available at* http://www.bouldercounty.org/lu/lucode/pdf/Boulder_County_Land_Use_Code_Article_4.pdf.

⁷³ See 1 EDWARD H. ZIEGLER, RATHKOPF’S THE LAW OF ZONING AND PLANNING §6:14, at 6-22 (Thomson Reuters/West 2008).

⁷⁴ See Lawrence D. Frank et al., *The Urban Form and Climate Change Gamble: How Transportation and Land Development Affect Greenhouse Gas Emissions*, PLAN. Aug./Sept. 2007, at 18, 19; Philip Langdon, *New Urbanists Step Up Their Progress Toward ‘Green’ Design*, NEW URB. NEWS, Jan./Feb. 2008, at 1, 4-7; Philip Langdon, *LEED Aims to Set ‘First National Standard for Neighborhood Design,’* NEW URB. NEWS, Sept. 2007, at 1; Adam Millard-Ball, *Pollution Solutions: Reducing Emissions in Your Own City is an Important First Step in Helping the Globe*, PLAN., *supra* at 10; Peirce, *supra* note 12; *Greenhouse Gurus: A Conversation with Two Experts on the Topic of the Day*, PLAN., *supra* at 24; Robert Steuteville, *Commentary, Many Reasons to Go Green*, NEW URB. NEWS, Jan./Feb. 2008, at 2.

⁷⁵ See SELMIET AL., *supra* note 60; Robert Steuteville, *Cool Spots, Bright Idea*, PLAN., *supra* note 74, at 1, 3-4; Ziegler, *Developing Greener Cities*, *supra* note 12.

urban development plan.⁷⁶ Green development and urban planning together could reduce these figures by perhaps 50-80% through the reduction of driving and utilization of energy efficient infrastructure and buildings.⁷⁷ Urban planning and zoning, however, are likely to remain a large part of the problem under the local jurisdictional regime of a NIMBYism that embraces the mantra of “think globally but exclude locally” – as its low-density pattern of land development in many communities seems to be set in stone.⁷⁸

Despite some talk about an “urban renaissance” in America during the 1990s (usually referring to the central business district of American cities), census data make clear that population densities have continued to decline in all regions of this country.⁷⁹ Recent 2007 census data, moreover, show that many major American cities, such as San Francisco, Chicago, Philadelphia, Baltimore, Memphis, San Antonio, Cleveland, Minneapolis, Pittsburgh, and Birmingham, as well as a number of other cities, are still losing population.⁸⁰ Most new development continues to be in newer outlying suburban areas and nearly all residential-zoned land in nearly any metropolitan region will usually be legally restricted to the development of detached single-family homes, with multifamily zones largely serving as buffer areas along interstate highways, pod commercial strips, or at other even more undesirable locations, nearly all of which are automobile-dependent.⁸¹

Whatever the original wisdom of this zoning policy, that time is past. Any national comparative analysis suggests that low-density, suburban sprawl has nothing whatsoever to do with rates of home ownership, housing appreciation, job creation, per-capita incomes, or economic growth (just ask people who live in London, Barcelona, or

⁷⁶ See Ziegler, *Developing Greener Cities*, *supra* note 12.

⁷⁷ See DROEGE, *supra* note 1; EWING ET AL., *supra* note 11; *Urbanism Holds Promise for Reducing Energy Use*, NEW URB. NEWS, Jul./Aug. 2005, at 3.

⁷⁸ See Robert Steuteville, *Cutting CO2 by Keeping the Car Culture*, NEW URB. NEWS, Jul./Aug. 2008, at 1; Ziegler, *supra* note 49.

⁷⁹ See Overberg, *supra* note 34.

⁸⁰ See *id.*

⁸¹ See Ziegler, *Developing Greener Cities*, *supra* note 12; NAT'L ASS'N OF HOME BUILDERS, ANNUAL HOUSING STARTS (1978-2007), <http://www.nahb.org/generic.aspx?genericContentID=554> (last visited October 28, 2008).

Shanghai). Regional, state, national, and even global interests stand today in opposition to this low-density and decidedly backward local governing regime.⁸²

Local low-density zoning and exclusionary growth-management programs are becoming increasingly dysfunctional in view of the changing market demographics in the United States. That is, of course, no guarantee of their immediate demise. The real estate markets in our metropolitan areas appear to be moving toward regional multi-centered intensive core business areas with the potential to accommodate nearby and integrated higher-density residential core neighborhoods.⁸³ Increased density in both urban core and older suburban areas could occur through redevelopment projects centered around higher-density, mixed-use, transit, and pedestrian-friendly (and much more sustainable) urban villages.⁸⁴

The fastest growing segment of the real estate market today is for higher-density, mixed-use, and less automobile-dependent development. By 2010, seventy percent of our population is expected to consist of singles and empty-nest households, prime buyer markets for this type of higher density housing arrangement.⁸⁵ The majority of these childless households are likely to prefer suburban, or even inner-urban, lifestyle-friendly (and less automobile-dependent) intensive village-center built environments.⁸⁶

This people-friendly (rather than car-friendly) “urbanization” of both our older, and even newer, suburban built environments could have the advantage of providing far greater choice in personal lifestyle and housing arrangements and also could provide a far greener urban footprint than conventional sprawl. Studies in this country show that people are willing to trade larger for smaller homes to live in a more “people” friendly

⁸² See SELMI ET AL., *supra* note 60.

⁸³ See GARREAU, *supra* note 17; Philip Langdon, *Economic Turmoil Alters Development Landscape*, NEW URB. NEWS, Oct./Nov. 2008, at 1; *Real Estate: A Special Report*, LEGAL TIMES, Oct. 27, 2008, at 20.

⁸⁴ See Witold RYBCZYNSKI, CITY LIFE (Touchstone 1995); Philip Langdon, *Capital Region Rail Stations are Fast Becoming Mixed-use Hubs*, NEW URB. NEWS, Jul./Aug. 2007, at 1; Martin C. Pederson, *Cities in the Digital Age: City Scholar Joel Kotkin Argues Against the Idea of an Urban Revitalization Panacea*, METROPOLIS MAG., Jan. 2004, available at <http://www.metropolismag.com/cda/story.php?artid=120>.

⁸⁵ See EWING ET AL., *supra* note 11.

⁸⁶ See *id.*; Tom Dooley, *Downtown Living Remains Strong: Fueled by Childless Households, In-town Homes Prosper*, REALTOR, Nov. 1, 2002, available at <http://www.realtor.org/archives/indwatch200211252>.

built environment with nearby mixed-uses and pedestrian-friendly amenities.⁸⁷ Moreover, rising oil prices and the recent serious downturn in the mortgage and housing markets in the United States will likely combine, at least in the near term, to significantly dampen further low-density conventional tract subdivision sprawl and increase the development in this country of closer-in, higher-density housing.⁸⁸ Low-density, automobile-dependent new housing developments on the suburban fringe are likely to be increasingly viewed as products with an uncertain or, perhaps, even a diminishing asset value and will, in any case, be difficult to finance.⁸⁹

The United States will likely witness in the years ahead the densification and “urbanization” of both newer and older suburban areas.⁹⁰ This “urbanization of suburbia” is already underway in many regions of this country. As Joel Kotkin points out, it is likely to be America’s “next great frontier.”⁹¹ Unfortunately, under existing low-density zoning regimes, these higher-density developments are likely to be poorly planned and relegated to isolated and residual buffer zones. By default, they are likely to be designed under existing zoning regimes with densities that are still completely automobile dependent. They are unlikely to be planned and developed as green communities within a regional growth management framework. In short, higher densities will not alone result in sustainable, lifestyle-friendly, and mixed-use urban core areas.⁹²

In the United States, the problem, too often, is that infill and redevelopment projects have densities that are so low that efficient public transit, perhaps even good bus

⁸⁷ See EWING ET AL., *supra* note 11; *Energy Costs Forcing U.S. Lifestyle Changes*, GROWTH/NO GROWTH, Aug. 2008, at 1; Philip Langdon & Robert Steuteville, *So Far, New Urban Projects Weather Downturn Better*, NEW URB. NEWS, Oct./Nov. 2007, at 1.

⁸⁸ See *Energy Costs Push Families Back to Cities*, *supra* note 87.

⁸⁹ See *id.*; Philip Langdon, *Density is Hot, Freeways are Not, in the New Los Angeles*, NEW URB. NEWS, Jul./Aug. 2005, at 2.

⁹⁰ See Langdon, *supra* note 89; *Energy Costs Forcing U.S. Lifestyle Changes*, *supra* note 87; Langdon & Steuteville, *supra* note 87.

⁹¹ Pederson, *supra* note 84.

⁹² See Ana Campoy, *With Gas Over \$4, Cities Explore Whether It's Smart to Be Dense*, WALL ST. J., July 7, 2008, at A1; Langdon, *supra* note 87; *Urbanism Holds Promise for Reducing Energy Use*, *supra* note 77.

service, makes little sense.⁹³ With sufficient densities, extensive intra-regional transit, like light rail, becomes feasible, as does light rail to regional airports, and even high speed inter-regional transit (about 50% of the air flights in the USA could be efficiently accommodated by megaregional high-speed rail), as car dollars are transferred to public transit dollars.⁹⁴ One thing seems certain: we are not rich enough now, and surely will not be rich enough in the future, to finance two costly and efficient (both private-auto and public) transit networks in our expanding metropolitan areas.⁹⁵

While there may be regional transportation planning for light rail or high-speed bus service, so-called transit oriented development (TOD) at station stops or key transit nodes is often simply not occurring in this country (and is unlikely to occur, even for many years ahead, in part, due to the profusion of alternative development sites within a region) at densities that justify either the infrastructure investment or that actually make possible a wide array of pedestrian-friendly mixed uses and amenities.⁹⁶ TOD densities make real sense when the neighborhood allows many residents to live, work, shop, and play without owning an automobile or without having to even use public transit on a daily basis.⁹⁷ Providing an auto-free built environment as a widely available lifestyle

⁹³ See Genevieve Giuiliano, *The Weakening Transportation- Land Use Connection*, 6 ACCESS 3 (2005); Randal O'Toole, *Vanishing Automobile Update No. 43: Rail Transit Won't Reduce Congestion*, Sept. 30, 2003, <http://ti.org/vaupdate43.html>.

⁹⁴ See BARNETT ET AL., *supra* note 9, at 51-55; MARK HINSHAW, *TRUE URBANISM: LIVING IN AND NEAR THE URBAN CENTER* (2007); Trevor Boddy, *Insight: Vancouverism vs. Lower Manhattanism: Shaping the High Density City*, ARCHNEWSNOW, Sept. 20, 2005, <http://archnewsnow.com/features/Feature177.htm>; Julie Grimm, *New Urbanism or Same Old Sprawl?*, SANTA FE NEW MEXICAN, May 25, 2006, available at http://www.freewmexican.com/story_print.php?storyid=44093.

⁹⁵ See PUENTES, *supra* note 32. "Building at higher densities in already developed areas by providing rapid transit can mean no additional infrastructure costs, or costs per acre of \$10,000 to \$20,000. The money saved by not investing in infrastructure at the metropolitan fringe can more than offset the investment in rapid transit." BARNETT ET AL., *supra* note 9, at 59.

⁹⁶ See Langdon, *supra* note 74; O'Toole: *Form Coalitions to Fight "Coercive Land-Use Planning,"* GROWTH/NO GROWTH, Jun. 2008, at 1; *Streetcar Plans Growing Across U.S.*, GROWTH/NO GROWTH, Sept. 2008, at 1; Campoy, *supra* note 92.

⁹⁷ See HINSHAW, *supra* note 94; Boddy, *supra* note 94; Langdon, *supra* note 84; EWING ET AL., *supra* note 11, at 153:

option for day-to-day living would seem to make great sense in an age of rising energy prices and where the traditional low-density built environment paradigm is fast becoming a fading and disfavored vision in our housing markets.⁹⁸

There are, perhaps, some lessons to be learned here from our brethren across the Atlantic. America is not Europe, of course, but we should keep in mind that cities there have much more experience with public transit development and, generally being less wealthy countries, are likely, perhaps, to be more sensitive to the costs and benefits of infrastructure investment and related housing development.⁹⁹ Under European transit

Two leading planning researchers recently asked, ‘which reduces vehicle travel more, jobs/housing balance or retail/housing mix?’ The answer—surprisingly, since work trips represent less than 20 percent of all trips—was jobs/housing balance. In most metropolitan areas, the cost of housing declines with distance from job centers and other desired destinations, while the cost of transportation increases. Without workforce housing, people have to drive until they qualify for a mortgage or else live in substandard housing. They also have to drive until they find decent schools for their kids. With rising gasoline prices, the financial tradeoff between a longer commute and less expensive housing is changing, and the potential savings from living in a convenient location with transportation choices is becoming a larger part of affordability.

⁹⁸ See *Boston To Adopt Green Standards For Private Buildings*, GROWTH/NO GROWTH, Jan. 2007, at 1; Campoy, *supra* note 92; Thaddeus Herrick, *Why Some Cities Think Developing at Rail Stops is a Mighty Good Road*, WALL ST. J., Dec. 6, 2006, at B1.

⁹⁹ See BEATLEY, *supra* note 12, at 63:

There are many lessons to be learned from these European cities in terms of both design and building of new residential districts and the broader scales of community and regional planning. In the new growth districts examined and described in this chapter (and elsewhere in this book), a strong emphasis is placed on connecting with and building onto the existing city and its fabric, building at densities that make walking and other alternatives to the automobile possible (not to mention the more efficient use of land), and designing new communities with town centers, diverse housing types, and mixtures of uses and activities Even the best new American communities typically lack these qualities.);

Leila Abboud, *Building Blocks: For Countries Looking to Reduce Their Energy Use, Europe Offers Some Valuable Lessons*, WALL ST. J., Feb. 11, 2008, at R15; COMM’N OF THE EUR. CMTYS., COMMISSION STAFF WORKING DOCUMENT ACCOMPANYING THE GREEN PAPER: TOWARDS A NEW CULTURE FOR URBAN

models, a TOD area might include a one-mile or more radius around a transit stop and have blended densities of 25 to 100 units per acre. Densities in Europe often are related and commensurate to the purpose and policy of public infrastructure and transit investment.¹⁰⁰ That apparently is still a novel idea in America. This type of coordinated and planned development is unlikely to occur in this country within a reasonable and financially-feasible timeframe, however, without regionally-coordinated growth management goals, plans, and standards supporting that development. For example, both the BART rail transit system in San Francisco and the Washington D.C. Metro rail system, each constructed over 30 years ago are still anticipating the development of European-style densities at many TOD sites in nearby station areas.¹⁰¹ True automobile-independent TOD development needs to be initiated in this country nearer the beginning, rather than toward the end, of this century.¹⁰²

MOBILITY (2007), *available at*

http://ec.europa.eu/transport/clean/green_paper_urban_transport/doc/2007_09_25_gp_urban_mobility_working_doc_en.pdf.

¹⁰⁰ See BEATLEY, *supra* note 12, at 112 (“Importantly, transit investments complement, and are coordinated with major land use decisions. Virtually all the major new growth areas identified in this study have good public transit service as a basic, underlying design assumption. There is also a concerted effort to place major activities and large developments adjacent to or in close proximity to public transit stops.”); Abboud, *supra* note 99; Philip Langdon, *Europeans struggle to Revive Traditional City-Making*, NEW URB. NEWS, Jul./Aug. 2008, at 8.

¹⁰¹ See BARNETT ET AL., *supra* note 9; Langdon, *supra* note 84; BEATLEY, *supra* note 12, at 66:

The European model of serious public control and guidance of future growth, the integration of the different spatial levels of planning, and an aggressive and strong public role in shaping the design of new development areas is one that American planning must eventually learn to emulate. Playing a much more active (and forward-looking) role in acquiring land (and both influencing growth patterns and reaping speculative gains) is also needed. At the very least, planning in American cities must do a better job of laying down a sustainable template of connected streets, transportation and other investments, ecological infrastructure, and the spatial outlines of community.

¹⁰² See *Boston To Adopt Green Standards For Private Buildings*, *supra* note 98; *Urbanism Holds Promise for Reducing Energy Use*, *supra* note 77; *Energy Costs Push Families Back to Cities*, GROWTH/NO GROWTH, Jul. 2008, at 1; Herrick, *supra* note 98. See also BARNETT ET AL., *supra* note 9, at 45:

In the United States, regionally important TOD areas are nearly always under local zoning control and more compact and intensive development is often prohibited or substantially scaled back when opposed by neighbors, which it often is.¹⁰³ TOD that consists, for example, of a park-and-ride lot, a pod shopping plaza, or a Taco Bell, and a nearby two or three story apartment or office building, is not an alternative sustainable development vision but merely an expensive attempt at traffic mediation.¹⁰⁴ As a traffic control measure, we might be better off just paying some people not to drive. TOD sites, also, are too often just that - undersized individual sites - when what is needed is space for whole neighborhoods and communities. Similarly, the fact that there are areas around a new housing project to walk and ride a bike does not make that built environment “pedestrian- and bicycle-friendly.” That designation should require that there be real places and destinations to walk and ride to (only then is it truly less automobile-dependent) and that is unlikely to occur without much higher development densities.¹⁰⁵ Too much of the space and expense of the built environment we are developing today, even under the banner of Smart Growth, is still devoted to the parking, housing, and

Many of the major cities in Europe are connected by high-speed rail today, and all of them will be by 2020. Japan’s major cities are connected by high-speed rail, and the Japanese continue to work to improve the speed and efficiency of rail travel. Taiwan is building a high-speed rail network to connect its major cities. In China work is underway to build high-speed railways linking Beijing to Shanghai, Nanjing, and other population centers. All of the cities that have high-speed rail also have airports; they all have a network of limited-access highways, and the all have local rail transit systems. Our global competitors have decided that high-speed rail is an essential element of a balanced transportation system.

¹⁰³ Robert Steuteville, *We Can’t Let NIMBYs Sink Reform*, NEW URB. NEWS, Jun. 2008, at 2; Campoy, *supra* note 92.

¹⁰⁴ See Giuiliano, *supra* note 93.

¹⁰⁵ See Langdon, *supra* note 74; Langdon, *supra* note 89; Langdon, *supra* at note 84; *Book Review: “True Urbanism” Demands Density*, GROWTH/NO GROWTH, Aug. 2007, at 1; *Urbanism Holds Promise for Reducing Energy Use*, *supra* note 77; Grimm, *supra* note 94.

movement of automobiles.¹⁰⁶ Ultimately, there will be a high cost incurred from just pretending that we are solving these serious development problems.

Regional support for critical urban planning goals and policies seems an indispensable ingredient in planning for sustainable metropolitan areas. Local growth management decisions with respect to areas selected for TOD or for other intensive urban core area development will likely need the support of regionally-shaped and concentrated market demand and urban growth policies.¹⁰⁷ The one unequivocal success of Portland, Oregon's regional growth management program during the last 30 years is the regional share of office and commercial development that has occurred in its downtown core area largely as a result of deliberate planning policies that steered that development into that designated growth area.¹⁰⁸ It is also a regional planning technique that is used in some European countries with great success.¹⁰⁹

In the United States, however, local urban plans are not supported by the coordinated growth policies of the region's other local jurisdictions.¹¹⁰ In effect, green development plans consistent with market demand for more sustainable compact growth in many metropolitan areas (where nearly all of this country's future growth will occur) are seldom, if ever, supported by any coordinated regional urban growth policy.¹¹¹ Successful higher-density and mixed-use development (that is not automobile dependent) for planned urban core areas will likely require regionally coordinated selection and designation of both "growth" and "no growth" areas. These plans, of course, would need to be regionally integrated and coordinated with major public transit and infrastructure

¹⁰⁶ See DONALD C. SHOUP, *THE HIGH COST OF FREE PARKING* (2005).

¹⁰⁷ See Jackson, *supra* note 11; see AM. PLANNING. ASS'N, *POLICY GUIDE ON PLANNING & CLIMATE CHANGE* (2008), available at http://www.ies-apa.org/docs/Draft_Climate_Change_Policy_Guide.pdf.

¹⁰⁸ Daniel Mandelker, *Managing Space to Manage Growth*, 23 WM. & MARY ENVTL. L. & POL'Y REV. 801, 815 (1999).

¹⁰⁹ See BEATLEY, *supra* note 12

¹¹⁰ See BARNETT ET AL., *supra* note 9, at 91; Jackson, *supra* note 11; Ziegler, *supra* note 49.

¹¹¹ See DOWNS, *supra* note 55.

investment decisions.¹¹² None of this will likely be possible under the existing local jurisdictional-governing arrangement.¹¹³

Rising oil prices and changing market demographics are combining to support exactly this kind of planning and zoning reform.¹¹⁴ Already, in the current market downturn, higher-density, less auto-dependent housing appears to be holding its value better than housing on the suburban fringe.¹¹⁵ Public transit-friendly housing developments also are reported to be outperforming more auto-intensive, conventional

¹¹² See ANDRES DUANY ET AL., *supra* note 17; Jackson, *supra* note 11; Campoy, *supra* note 92.

¹¹³ See BARNETT ET AL., *supra* note 9, at 91; Jackson, *supra* note 11; Ziegler, *Developing Greener Cities*, *supra* note 12; Campoy *supra* note 92.

¹¹⁴ See EWING ET AL., *supra* note 11, at 17-36:

[A] national consumer survey by the global public relations company Porter Novelli found that 59 percent of U.S. adults now “support the development” of compact communities (defined in detail in the survey itself). Half would now be interested in living in a compact community. . . . Levels of support were high among all groups except rural residents. More impressive than the absolute levels of support was the increase in support between survey years 2003 and 2005, a statistically significant 15 percent. The smart growth community was described identically and questions were phrased identically in the two survey years. The authors attribute the increase to media coverage of sprawl and its impacts. When it comes to housing demand, demographics is destiny. As baby boomers become empty nesters and retirees, they are exhibiting a preference for compact, walkable neighborhoods. So are single adults and married couples without children. These trends likely will accelerate, because the baby boom generation represents America’s largest generational cohort. By 2020, the number of individuals turning 65 years of age will skyrocket to more than 4 million per year. Between 2007 and 2050, the share of U.S. population older than 65 years of age will grow from 12.8 to 20.7 percent. Growth in households without children (including one-person households) also will rise dramatically. From 2000 to 2025, households without children will account for 88 percent of total growth in households. Thirty-four percent will be one-person households.

¹¹⁵ See Langdon, *supra* note 87; Langdon & Steuteville, *supra* note 87; *Energy Costs Forcing U.S. Lifestyle Changes*, *supra* note 87 (“As gas prices hover around \$4 a gallon, the nation’s far-flung suburbs are losing their appeal.”); *Energy Costs Push Families Back to Cities*, *supra* note 100.

subdivision developments.¹¹⁶ For the first time in this country’s history, resale prices of multi-unit housing are doing as well or better than detached single-family homes in the same region.¹¹⁷ According to one report, the market for more compact small-lot and attached housing is so seriously undersupplied that if we built nothing but that kind of development in the United States for the next 25 years, the country would still have a surplus of large-lot, single-family houses.¹¹⁸ Fortunately, this growing demand for higher density and less auto-dependent development coincides with the need to plan for sustainable pedestrian, bicycle, and transit-friendly “green development” in our metropolitan areas.¹¹⁹

When discussing growth management policy, it is, perhaps, worth noting that higher-density housing is not itself the solution to the need for greener development

¹¹⁶ See Langdon, *supra* note 112.

¹¹⁷ See EWING ET AL., *supra* note 11; Langdon & Steuteville, *supra* note 87; *Energy Costs Forcing U.S. Lifestyle Changes*, *supra* note 87.

¹¹⁸ EWING ET AL., *supra* note 11, at 26 (“Nelson projects that by 2025, the demand for attached and small-lot housing will exceed the current supply by 35 million units (71 percent), while the demand for large-lot housing will fall short of the current supply. If he is correct, the United States already has too much of the ‘big stuff.’”).

¹¹⁹ See Langdon & Steuteville, *supra* note 87; Campoy, *supra* note 92; EWING ET AL., *supra* note 11, at 23:

There are many reasons why smart growth may be the “low-hanging fruit” in the struggle against climate change. The main reason is the large and growing consumer demand for homes in compact neighborhoods. The real estate analysis firm Robert Charles Lesser & Co. (RCLCO) has conducted a dozen consumer preference surveys for urban and suburban builders to help them design their projects. The RCLCO surveys have shown that about one-third of the respondents at every location are interested in smart growth housing (Logan 2007). Preference varies by geography, economic and demographic fundamentals, and buyer profiles; life stage and income are key variables. Other studies by the National Association of Home Builders (NAHB), the National Association of Realtors (NAR), the Fannie Mae Foundation, high production builders, and university researchers have corroborated these results, with some estimating even greater demand for compact development.

options.¹²⁰ Higher-density neighborhoods simply provide the opportunity to plan for green development.¹²¹ By necessity, if nothing else, to accommodate future population growth, there is likely to be increasing densities over time in this country's metropolitan areas through infill and redevelopment of both newer and older suburban areas. Rising oil prices will support this trend.¹²² Unless planned and designed otherwise, however, our communities and regions are likely to remain automobile-dependent places, where, like Los Angeles (the highest density urbanized area in the United States), Americans will live their lives in poorly planned, high-density, and automobile-dependent environments.¹²³ If this occurs, life in America will surely be poorer and planned largely around high fuel costs and traffic congestion.¹²⁴ It will also likely be unsustainable in its

¹²⁰ EWING ET AL., *supra* note 11, at 19 (“The role of density, however, should not be overemphasized. As important as density is, it is no more fundamental to compact development than are the mixing of land uses, the development of strong population and employment centers, the interconnection of streets, and the design of structures and spaces at a human scale.”).

¹²¹ See Langdon, *supra* note 87, at 2; *Book Review: “True Urbanism” Demands Density*, GROWTH/NO GROWTH, Aug. 2007, at 1; Campoy, *supra* note 92.

¹²² See EWING ET AL., *supra* note 11; *Energy Costs Forcing U.S. Lifestyle Changes*, *supra* note 87; *Energy Costs Push Families Back to Cities*, *supra* note 100.

¹²³ See Lang & Nelson, *supra* note 8; BARNETT, ET AL., *supra* note 9, at 4:

According to the annual study of urban mobility and traffic congestion published by the Texas Transportation Institute, the impacts on drivers in the fast-spreading multi-city regions described in this book are substantial indeed. Drivers in Los Angeles endure an average of 93 hours per year in congestion-related delays; Orlando drivers lose 51 hours, and Atlanta drivers lose 60 hours. Average annual delays in Dallas have increased more than fourfold, from 13 hours in 1982 to 61 hours in 2002. The institute has concluded that congestion cost the American economy some \$63 billion in lost productivity and wasted fuel in 2004.

¹²⁴ See *id.*; James van Hemert & Peter Pollock, Opinion, *Connecting the Tracks, Transit for a Front Range “Megalopolis,”* DENVER POST, Dec. 8, 2006:

Many megapolitan areas are already severely impacted by automobile congestion and are approaching build-out under current policies. Armando Carbonell of the Lincoln Institute of Land Policy and Robert Yaro of the Regional Plan Association describe an active approach to special planning for megapolitan regions that has been undertaken in Europe, noting that the U.S. has no comparable strategy for dealing with growth, mobility,

present form.¹²⁵ Without the initiation of some regional-governing framework that establishes sustainable goals and standards for local urban planning and zoning, this seems the likely scenario for America's metropolitan areas in the years ahead.¹²⁶

V. Regional Planning Policies and the General Welfare

The potential benefits of more compact urban areas have been known and discussed for years.¹²⁷ Higher density areas can be designed to consume far fewer

environmental protection and economic development. They argue that expanding the capacity of the transportation system will be necessary, even as infill and redevelopment makes it more difficult.

¹²⁵ BARNETT ET AL., *supra* note 9, at 14-16. According to urban land use expert Christopher B. Leinberger, “[m]any low-density suburbs and McMansion subdivisions, including some that are lovely and affluent today, may become what inner cities became in the 1960s and ‘70s - slums characterized by poverty, crime and decay.” *Energy Costs Push Families Back to Cities*, *supra* note 100.

¹²⁶ See Book Review: “*True Urbanism*” Demands Density, *supra* note 121; Ziegler, *supra* note 49; Ana Campoy, *California Seeks to Curb Sprawl*, WALL ST. J., Sept. 2, 2008, at A6; Peirce, *supra* note 12; EWING ET AL., *supra* note 11, at 28:

Recognizing the unsustainable growth in driving, the American Association of State Highway and Transportation Officials, representing state departments of transportation, recently called for VMT growth through 2055 to be cut by half Such unlikely allies as the Institute of Transportation Engineers and the Congress for the New Urbanism have teamed up to develop new context-sensitive street standards for walkable communities. At the local level, several hundred traffic-calming programs have been created in the past decade; the term traffic calming was not even used in the United States until the mid-1990s.

¹²⁷ See DROEGE, *supra* note 1; EWING ET AL., *supra* note 11, at 151:

The average American is responsible for annual emissions of 24.5 metric tons of CO₂. Residents of New York City, however, are responsible for only 7.1 metric tons of CO₂ per year, less than one-third the national average. New York City is more energy efficient for two key reasons: a more efficient transportation system and more efficient buildings. Two-thirds of New Yorkers take transit or walk to work; fewer than 5 percent drive to work in the central business district. And almost no one drives to the store to pick up a quart of milk or to the gym to ride a

resources and energy, provide for more economical and efficient infrastructure and public services, particularly public transit options, and can be designed to accommodate a wide mix of housing types and a broad array of people-friendly nearby uses and amenities, and all at a human scale not possible or practical in a landscape of low-density sprawl.¹²⁸ This, of course, is, and has been, the vision of the “Smart Growth” and “New Urbanism” movements in the United States.¹²⁹ For nearly a generation in this country, these groups, as well as others, have promoted this kind of change in the current development paradigm of automobile-dominated regional sprawl. The truth, however, is that these efforts over the years have seldom produced developments fully in accord with this alternative vision.¹³⁰

While these reform efforts have increased the level of public awareness of the need for change in the planning of the built environment, there has been little real transformation in the dominate-development paradigm in this country.¹³¹ About 80% of all new housing starts in recent years have been detached single-family homes (with the houses getting bigger despite decreasing household size).¹³² Even New Urbanist developments that have been built tend to be isolated low-density projects that seldom have an array of nearby people-friendly mixed uses and human-scale amenities and tend to be largely, if not completely, automobile-dependent.¹³³ Nearly all the various forms of

stationary bicycle. The city’s multifamily, mixed-use buildings share walls and use less energy than free-standing structures.

¹²⁸ See BARNETT ET AL., *supra* note 9, at 17-45; BROOKINGS INST., *supra* note 4; EWING ET AL., *supra* note 11.

¹²⁹ See CALTHORPE & FULTON, *supra* note 14; ROBERT STEUTEVILLE ET AL., NEW URBANISM: COMPREHENSIVE REPORT & BEST PRACTICES GUIDE (New Urbanism 2003).

¹³⁰ See HINSHAW, *supra* note 94; Ziegler, *supra* note 49; Boddy, *supra* note 94; Grimm, *supra* note 94.

¹³¹ See Steuteville, *supra* note 103; Ziegler, *Developing Greener Cities*, *supra* note 12; *Book Review: “True Urbanism” Demands Density*, *supra* note 121.

¹³² See NAT’L ASS’N OF HOME BUILDERS, *supra* note 81.

¹³³ See ROBERT FULTON, THE NEW URBANISM: HOPE OR HYPE FOR AMERICAN COMMUNITIES? (Lincoln Institute of Land Policy 1996), available at <http://www.lincolninst.edu/pubs/PubDetail.aspx?pubid=14>; Langdon, *supra* note 84. See also BEATLEY, *supra* note 12, at 65:

higher density, multiunit housing now being built in this country, moreover, are likely be completely automobile-dependent. We have been shaping the built environment in the United States to fit the memory (and increasingly outdated preferences) of a bygone century.¹³⁴

The problem, though, is not with the New Urbanist vision. As a form of housing and living arrangement, New Urbanism is increasingly compatible with the changing housing market in this country.¹³⁵ The problem is that these forms of green development projects are often simply illegal under local zoning codes or are strongly and successfully

The growing interest in and popularity of the New Urbanism in the United States perhaps offers some hope as well. These designs – seen in such places as Kentlands (Maryland) and Laguna West (California) – aspire to many of the features of high-quality compact communities. They are, to be sure, somewhat higher in density, more compact, and more walkable. But in many ways, their reality does not meet their aspirational rhetoric. The densities are often not much higher than conventional suburban development, they are often built on Greenfield sites, and they often lack the transit, mixed uses, and other ingredients that could make them fundamentally more sustainable. Moreover, and unfortunately, some believe New Urbanism and sustainable communities to be synonymous, even though such New Urbanism projects rarely reflect and clear or significant concern about reducing ecological impacts or promoting more ecologically sustainable lifestyles Perhaps New Urbanism represents a positive trend upon which to grow a more European-like development style, but it will need to become much greener in the process.

¹³⁴ See EWING ET AL., *supra* note 11, at 23-36; BERMAN, *supra* note 48, at 277:

Joel Garreau has been criticized for saying that if edge cities are becoming dominant, it's because that's what the American people want. True, this ignores the fact that Americans are largely oblivious to other alternatives, and it ignores the historical forces that promoted suburbs over cities; but the man clearly has a point: for whatever reasons, Americans do want this. We cannot squirm away from the fact that we got the landscape that reflects our values, the one that says who we are and how we choose to live.

The critical question in the years ahead is whether changing lifestyle choices and real estate preferences in the United States will be able to change this dynamic. As discussed elsewhere herein, rising oil prices may already be accelerating the present trend away from low density housing sprawl.

¹³⁵ See EWING ET AL., *supra* note 11, at 23-36.

opposed by nearby NIMBYs that dominate the local urban planning process.¹³⁶ The truth of the matter is that cities are great at talking the “green talk” but actually quite lousy at walking the “green walk” in local urban planning and zoning. As a recent report points out, under the current local governing arrangement, NIMBYs are in a position to block, at nearly every turn, any real change and zoning reform:

To solve the problems we face, zoning reform has to take place at least 10 times as rapidly as it is proceeding now. And I think that’s going to occur, so to speak, over dead NIMBY bodies. Nothing noble, or even rational, fuels their opposition to smart growth. With conventional development, there’s some justification. With smart growth, it’s fear of change, prejudice, stubbornness, and the mentality of the mob. Meeting the coming challenges will be enormously difficult — perhaps as difficult as winning World War II — and we will need every bit of the old can-do American spirit. NIMBYism is the can’t-do spirit, which is in danger of strangling this country if we let it.¹³⁷

Some self-styled Green Cities, like Denver, are actually involved in the down zoning of whole neighborhoods, increasing their “exclusion GHG emissions” from

¹³⁶ See Philip Langdon, *Zoning Reform Advances Against Sprawl and Inertia*, NEW URB. NEWS, Jan./Feb. 2003, at 1; Ziegler, *supra* note 49. See also BEATLEY, *supra* note 12, at 65:

One of the clear lessons from research on the visual references of Americans (especially the work of Anton Nelessen) is the importance of aesthetics and design in determining acceptability of density. Incorporation of trees, sidewalks, on-street parking, varied rooflines, and so on would substantially improve the attractiveness of higher-density forms of housing Objections to density are often founded in a fear about what the visual implications or ramifications will be (and a sort of sterile concrete, higher-bulk image of what multi-family and higher density housing would entail). Careful design and the incorporation of desired amenities would do much to improve acceptability of density in American communities.

¹³⁷ Steuteville, *supra* note 103.

expanded regional automobile driving.¹³⁸ Moreover, local zoning programs seldom utilize their site orientation and design controls in regulating land development to promote solar or other renewable energy systems.¹³⁹ In some areas, wind turbines and their support facilities may be prohibited by local zoning from locating and operating within an entire community.¹⁴⁰ Even this country's electric transmission grid is badly in need of upgrading and is proving inadequate for our renewable energy needs due in part to local NIMBY opposition to infrastructure expansion or replacement. Clean energy systems, such as wind turbines (representing hundreds of millions of dollars in capital investments), are actually being shut down in some areas of the country due to the inadequate capacity of the electric grid network.¹⁴¹ This is a national problem that is expected to get worse. The United States' inadequate electric transmission grid has the potential to significantly affect investment in renewable energy technologies (wind and solar energy technology now produce less than 1% of this country's energy).¹⁴²

Reform of local urban planning and growth management programs is increasingly likely to focus on the creation of potential forms of regional and metropolitan based policy frameworks for addressing sustainable development problems. Consider, for example, the recent policy report on climate change of the American Planning Association, considered by some a defender of local prerogatives. The report calls for new federal and state legislation creating policies, programs, standards, and funding prioritization related to mitigating greenhouse gas emissions and promoting higher-density, mixed-use, and less automobile-dependent development.¹⁴³ While the report is vague on the specifics of changes in institutional governing arrangements, it is clear in its essential message:

¹³⁸ Daniel J. Chacon, *Multiplex Units Targeted*, ROCKY MTN. NEWS, Sept. 9, 2008, at 7; Federico Cheever et al., *supra* note 11.

¹³⁹ See Erica Heller, *Urban Wind Turbines*, ZONING PRACTICE, July 2008, at 2.

¹⁴⁰ *Ecogen v. Town of Italy*, 438 F. Supp. 2d 149 (W.D. N.Y. 2006).

¹⁴¹ Matthew L. Wald, *Wind Energy Bumps into Power Grid's Limits*, N.Y. TIMES, Aug. 27, 2008, at A1.

¹⁴² See WENDY WILLIAMS ET AL., *CAPE WIND* (2007); Jeffery Ball, *The Matrix Overloaded: Clean Energy Will Depend on a New, 'Smart' Grid*, WALL ST. J., Oct. 24, 2008, at A14; Wald, *supra* note 138.

¹⁴³ See AM. PLANNING. ASS'N, *supra* note 107.

Regional coordination will be necessary in order to meet aggressive targets for reduction of GHG emissions. Reaching these targets will not be possible based on the actions of individual jurisdictions or communities. In addition, action that affects regional investments or assets will be more effective if it is the result of regional initiatives and partnerships. Regional visioning programs and blueprint plans create excellent opportunities to build action agreements to address climate change and to set goals in conjunction with coordinated planning for regional development and infrastructure investment. Regional governance structures and agencies can be very valuable in developing and implementing integrated approaches to climate change mitigation and adaptation.¹⁴⁴

Moving toward more sustainable forms of development in our metropolitan areas seems likely to require nothing less than an integrated, coordinated, and efficient regional urban planning policy. Recent reports by the Brookings Institution,¹⁴⁵ the Urban Land Institute,¹⁴⁶ Smart Growth America,¹⁴⁷ and other organizations highlight an increasing awareness that sustainable and prosperous metro areas will require the reform of local zoning and the fashioning of new regional cooperative frameworks.¹⁴⁸

¹⁴⁴ *Id.* at 14.

¹⁴⁵ See BROOKINGS INST., *supra* note 4; BROOKINGS INST., MOUNTAIN MEGAS: AMERICA'S NEWEST METROPOLITAN PLACES AND A FEDERAL PARTNERSHIP TO HELP THEM PROSPER 8-9 (2008), available at http://www.brookings.edu/~media/Files/rc/reports/2008/0720_intermountain_west_sarzynski/IMW_full_report.pdf.

¹⁴⁶ See EWING ET AL., *supra* note 11.

¹⁴⁷ See Philip Langdon, *New Urbanists Urged to Wage National Campaign*, NEW URB. NEWS, Apr./May, 2008, at 1, 3.

¹⁴⁸ See *id.*; Steuteville, *supra* note 103; Ziegler, *supra* note 12; CALTHORPE, *supra* note 17, at 35-36:

Such a major reordering of government policies and subsidies will take a powerful political coalition. The coalition against such integrated planning can be large: localities looking for growth and tax base regardless of development quality or regional

It seems wise to assess the potential benefits of creating some new regional governing framework or coordinating arrangement that leaves the details of urban planning and zoning to local jurisdictional control but that, quite frankly, requires that local planning decisions be consistent with regional sustainable development growth plans and policies. Perhaps it is time for another proposed Quiet Revolution in land use control, similar to that proposed in this country nearly 40 years ago.¹⁴⁹ There are a number of models in place and much we can learn from the first generation of state-created regional “areas of critical concern” and “coastal planning” agencies, as well as from advisory regional planning commissions, and the successes and failures of regional transportation agencies and regional councils of government.¹⁵⁰

There is actually a respected, though checkered, and perhaps underappreciated, tradition in this country with respect to regional planning, going back to the New Deal era in America.¹⁵¹ And while it’s true that Americans tend to resist regionalism in urban planning matters, perhaps the only thing more “fanciful” today than the idea of “metropolitan planning” is the idea that we will be able to seriously address our urban development problems without some sensible and sustainable regional governing arrangement.¹⁵²

implications; developers looking for opportunities to repeat past successes without regard for changing times or consequences; neighborhood groups hoping to preserve and enhance property values by exclusionary practices; and people (i.e. voters) simply afraid of the unknown or a loss of control. The forces for the status quo are powerful drives that are self-reinforcing. The defensive desire for a secure and exclusive private domain and the tendency of specialists to maximize segments rather than wholes, both conspire to inhibit change.

¹⁴⁹ See FRED BOSSELMAN & DAVID CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* (1971).

¹⁵⁰ See 3 ZIEGLER, *supra* note 73, at ch. 36.

¹⁵¹ See Daniel R. Mandelker et al., *Planning and Control of Land Development: Cases and Materials* 38 (2008).

¹⁵² See Jackson, *supra* note 11; Ziegler, *supra* note 49; Steuteville, *supra* note 103.

Local jurisdictional control of urban planning, in any case, has never been held inviolate in this country from federal and state intervention. At the federal level alone, legislation preempts, to one degree or another, local zoning in a variety of matters, including some energy related projects, housing for the disabled, manufactured housing building codes, religious land uses, and certain types of telecommunication facilities.¹⁵³ At the state level, zoning law treatises on the topic provide a long list of A-Z activities and land uses that are partially, or entirely, controlled by state legislation in some states, ranging from forms of affordable housing to cemeteries, child day-care centers, farming, landfills, mining, road access, schools, and utilities.¹⁵⁴

Federal and state governments, perhaps, can be said to have been as strong as thought necessary, at any given point in time, in curtailing the abuse of local zoning controls. Perhaps, therein lies the future of local planning and zoning reform. Janice Griffith may have been right to observe just a few years ago that “[a] transformation of American cities and outlying regions will occur during the twenty-first century as the citizenry responds to the political, economic, equitable, and environmental challenges posed by the continuing rapid growth many metropolitan areas will face.”¹⁵⁵ Another recent report refers to a growing “perfect storm” of support in this country for perhaps exactly this kind of change in urban planning.¹⁵⁶ What’s needed here is a regionally-coordinated and sustainable-development framework for local urban planning.¹⁵⁷ That is not a small matter. The problems, though, are regional in scope, widespread, serious, and worsening.¹⁵⁸

¹⁵³ See SELMI ET AL., *supra* note 60, at 458-59.

¹⁵⁴ See 3 ZIEGLER, *supra* note 73, at ch. 48.

¹⁵⁵ Janice Griffith, *Regional Governance Reconsidered*, 21 J.L. & POL. 505, 558-59 (2005).

¹⁵⁶ EWING ET AL., *supra* note 11, at 23.

¹⁵⁷ See Griffith, *supra* note 155; Keith Aoki, *All the King’s Horses and All the King’s Men: Hurdles to Putting the Fragmented Metropolis Back Together Again? Statewide Land Use Planning, Portland Metro and Oregon’s Measure 37*, 21 J.L. & POL. 397 (2005); Jackson, *supra* note 11.

¹⁵⁸ BROOKINGS INST., *supra* note 4; EWING ET AL., *supra* note 11, at 154 (“Such a comprehensive overhaul of America’s development processes will be a mighty challenge. But it is on the same ambitious scale as other proposals that are being considered in the climate change debate, including efforts to switch to

This new regional arrangement need not involve developers in a more costly, complex, and lengthier government-permitting process. Reform of local jurisdictional controls necessarily should involve the creation of more transparent standards and procedures for securing development approvals, particularly in designated growth areas. This type of procedural reform generally has been an unfulfilled promise of Smart Growth.¹⁵⁹ Builders and others in the development community may welcome this type of regional reform as much, if not most, development in the coming years is likely to be infill and redevelopment -- an unpredictable undertaking typically fraught with endless NIMBY delays, hearings, and new demands.¹⁶⁰

This is not the place for a discussion of the range of potential sustainable development goals, policies, and standards for this type of regional governing arrangement. The literature on the topic of urban planning and sustainable development is impressive, thoughtful, and growing, both in this country and throughout the world.¹⁶¹ Regional policies need to provide a sustainable-development framework of goals, guidelines, and standards for both regional and local decision making. Such a regional framework, however, should attempt to allow discretion for flexibility and innovation, consistent with those goals, for local initiatives, programs, and experimentation. New proposed legislation in California is an initial first step in this direction.¹⁶² The legislation, which is supported by many of the state's developers and environmental groups, conditions federal and state transportation funds on the

renewable fuels, dramatically increase vehicle efficiency, end oil imports from hostile nations, and renew investments in nuclear power.”).

¹⁵⁹ EWING ET AL., *supra* note 11, at 151-52.

¹⁶⁰ Ziegler, *supra* note 49; Steuteville, *supra* note 103.

¹⁶¹ See, e.g., AUSTRALIAN CONSERVATION FOUNDATION, CONSUMING AUSTRALIA: MAIN FINDINGS (2007), available at <http://americandreamcoalition.org/ConsumingAustralia.pdf>; BEATLEY, *supra* note 12; EUROPEAN COMMISSION, GREEN PAPER: TOWARDS A NEW CULTURE FOR URBAN MOBILITY (2007), available at http://ec.europa.eu/transport/clean/green_paper_urban_transport/doc/2007_09_25_gp_urban_mobility_memo_en.pdf; EWING ET AL., *supra* note 11; SUSTAINABLE URBAN DEVELOPMENT IN CHINA: WISHFUL THINKING OR REALITY?, *supra* note 12; URBAN ENERGY TRANSITION: FROM FOSSIL FUELS TO RENEWABLE POWER, *supra* note 12.

¹⁶² EWING ET AL., *supra* note 11, at 144.

adoption of regional urban development plans for higher density and more transit-friendly development strategies.¹⁶³ Regional planning commissions are responsible for reviewing and crafting metropolitan-wide plans that promote state and regional GHG-emission goals.¹⁶⁴

While urban design and planning standards for expanding local and regional transit options and implementing green building standards and codes are critically important, there are still other equally important sustainable development issues that could benefit from regionally coordinated growth management policies. Increasingly important in the years ahead will be alternative energy systems planning, inter-modal transit planning, regional food security, water supply and treatment, green urban cooling and heating networks, waste treatment and recycling, regional freight transport, the planning of green carbon sinks and park networks, and the preparation of green development sites.¹⁶⁵ These are all undertakings that could greatly benefit from regionally-coordinated goals, plans, technical support, and funding. While there may be few top-down solutions that fit all urban regions, our metropolitan areas are facing regional problems of a scope that will require the near transformation of our metropolitan world in the first half of this century. Individual communities are unlikely to be able to go it alone without regional support and cooperation.¹⁶⁶

Providing some regional framework for growth may help us avoid waking up some years from now to a world of unsustainable plug-in automobile traffic jams, unsustainable solar-powered housing sprawl, a collapsed regional road or utility infrastructure, or a metropolitan area without a ready and affordable supply of drinking water, energy, or food. We need to create a growth-management policy that avoids addressing critical growth issues in the future with ad hoc, massive, last-ditch,

¹⁶³ *Id.*

¹⁶⁴ Campoy, *supra* note 92.

¹⁶⁵ DROEGE, *supra* note 1; URBAN ENERGY TRANSITION: FROM FOSSIL FUELS TO RENEWABLE POWER, *supra* note 12; Kelly Sinoski, *Metro Vancouver Eyes Highrise Greenhouses: Vertical Farms and 'Urban Agriculture' May Be the Way of the Future*, VANCOUVER SUN, Oct. 20, 2008.

¹⁶⁶ AM. PLAN. ASS'N, *supra* note 107; BROOKINGS INST., *supra* note 4.

crisis interventions. We are not likely to be rich or wise enough, or possess the social cohesion in the future, to make that approach work.

National and state implementing legislation will be needed to establish this type of new regional framework for sustainable green development and urban planning policy. There are, of course, many potential institutional arrangements for implementing this type of metropolitan governing framework. The usual policy carrots and sticks related to funding for infrastructure, transportation, urban planning, and other federal and state assistance programs might be considered, bolstered, funded, and integrated. Also, there should be consideration of the more direct federal institutional models for regional or state implementing arrangements that now address other environmental issues such as air and water pollution or surface mining. There does seem to be, at least, the beginning of an awakening throughout the United States to the importance of this undertaking and to the need for devising regional solutions to these metropolitan problems.¹⁶⁷

VI. Towards a Conclusion

Despite the talk in this country about sustainability and green development, we have been continuing a low-density and automobile-dependent growth paradigm that is clearly inconsistent with the economic, energy, and environmental realities of the twenty-first century.¹⁶⁸ The recent downturn in the economy and housing market in the United States may have a silver lining in giving this country some pause to rethink the future growth of our metropolitan areas. Frankly, we are on a collision course with a harsh reality and there appear to be no easy policy answers or feasible technological solutions on the near horizon for this country's sustainable development problems.¹⁶⁹

¹⁶⁷ Campoy, *supra* note 92; EWING ET AL., *supra* note 11; HINSHAW, *supra* note 94; Langdon, *supra* note 143; Peirce, *supra* note 12.

¹⁶⁸ DROEGE, *supra* note 1; URBAN ENERGY TRANSITION: FROM FOSSIL FUELS TO RENEWABLE POWER, *supra* note 12.

¹⁶⁹ EWING ET AL., *supra* note 11; Ziegler, *supra* note 27. *See also* Ziegler, *American Cities*, *supra* note 12:

I am afraid we wait at great peril for the invention of the American 'dream car' or some other yet unknown technological fix that solves these problems. While research for

Public management of the built environment in the United States throughout most of the twentieth century turns out to have been a great malfeasance.¹⁷⁰ We mortgaged our children's future in the design of our landscape and ignored warnings about the sustainability of our urban areas in favor of short-term convenience and consumption. Today, discussion about how we manage the built environment needs to turn away from the false problem of devising policies to support and subsidize individual preferences that carry enormous and unsustainable externalized costs. Our urban planning policies in this century need to focus on devising and implementing growth strategies that provide people in this country with affordable and sustainable housing and transportation options.

Higher densities that are likely to occur in this country's metropolitan areas in the years ahead hold the potential for addressing many of our sustainable development problems, but only if this new development embodies a green design policy that provides transit-friendly and automobile-free lifestyle options. Urban planning policies and standards should focus new growth in designated intensive urban-core areas within a region at densities that allow many, if not most, residents therein to live, work, shop, and play without having to use an automobile. Adoption and funding of metropolitan area growth policies through a coordinated regional governing arrangement may be our best

alternative energy technologies needs to be robustly funded, there are simply no better and sustainable solutions now in sight. Building greener at higher densities and reducing automobile-dependence holds the promise of finding real and sustainable solutions to these problems. The cleanest and cheapest power plants and cars are the ones we don't have to build or use due to smart urban planning.

¹⁷⁰ See BERMAN, *supra* note 48, at 262-64:

[A]s a model of 'urban' design, says British architect Lord Richard Rogers, the suburban one is the least sustainable in the world.... A sustainable design, according to Lord Rogers, is compact, polycentric, ecologically aware and based on walking,' and it promotes social inclusion. . . . Mies van der Rohe's famous statement, that architecture was the 'will of the epoch translated into space,' attains a special poignancy in the suburban landscape. For the will of the epoch here is 'Leave me alone,' and suburbia is the logical extension of that mentality. The paradox of this arrangement was not lost on Lewis Mumford, who described suburbia as 'a collective effort to live a private life.' In many ways, this goes to the heart of the matter, for it is a project based on self-contradiction – the tragedy of American domestic policy, one might call it.

(and perhaps only) bet for building this sustainable future. This is a huge undertaking and we may already be late to the challenge.¹⁷¹

¹⁷¹ See Rear Admiral Hyman Rickover, U.S. Navy, Energy Resources and Our Future, Remarks at Banquet of the Annual Scientific Assembly of the Minnesota State Medical Association (May 14, 1957) (transcript available at <http://bartlett.house.gov/uploadedfiles/dodrickover1957speech.pdf>):

Curiously, the automobile, which is the greatest single cause of the rapid exhaustion of oil reserves, may eventually be the first fuel consumer to suffer. Reduction in automotive use would necessitate an extraordinarily costly reorganization of the pattern of living in industrialized nations, particularly in the United States. It would seem prudent to bear this in mind in future planning of cities and industrial locations.