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From Sea to Shining Sea: Manifest Destiny and the National Land Use Dilemma

Henry R. Richmond*

I. The National Land Use Dilemma

A. *Manifest Destiny*

Powerful cultural and historical factors have led many Americans to believe that it is a landowner's inalienable right to use his property as he desires, without undue restriction.¹ This extremely individualistic view of land ownership dates back to America's colonial days and became ingrained in its citizens as they conquered the continent.² After the revolution, land ownership in America became even more attractive because it was then free from English land tenure restrictions; any individual could buy or sell land freely and enjoy the social respect associated with being a property owner.³ As a result, even though land and wilderness were perceived as the enemy (or as obstacles to

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1. William G. Laffer III, *The Private Property Rights Act: Forcing Federal Regulators to Obey the Bill of Rights*, HERITAGE FOUND. REP. ISS. BULL. No. 173, Apr. 3, 1992. "Each American correctly considers it her or his birthright to be free to acquire land on which to build a home or to use however she or he sees fit, so long as this use does not interfere physically with the rights of neighbors." *Id.* at 12.

2. See John F. Kennedy, *Introduction* to STEWART L. UDALL, *THE QUIET CRISIS AND THE NEXT GENERATION* at xi (1988). "From the beginning, Americans had a lively awareness of the land and the wilderness. The Jeffersonian faith in the independent farmer laid the foundation for American democracy; and the ever-beckoning, ever-receding frontier left an indelible imprint on American society and the American character." *Id.*

3. JAMES H. KUNSTLER, *THE GEOGRAPHY OF NOWHERE* 25 (1993).

be conquered), if the land could be subdued, it became an asset and provided great opportunity.⁴

As America extended its borders westward, the federal government acquired additional land by purchase and conquest. New territory was often given to individuals who agreed to farm or develop the land, or to private companies to be used for the construction of the railroads.⁵ The conveyance of title to private companies and individuals served the national interest by pushing the Mexicans south out of Texas, New Mexico, Arizona and California, and the British north out of the Oregon Territory. As a result, the United States ultimately controlled the heart of the North American continent.

Beginning around 1870, and continuing for approximately fifty years, the Nation's population became concentrated in its cities, as the American economy shifted its focus from agriculture to manufacturing.⁶ The industrialization of America, however, had devastating effects on its urban centers as the people and environment were exploited to serve the growing economy. The air became heavily polluted with smoke from the factories; soot covered the land; and waterfronts, considered the prime locations for new industry, were destroyed. Additionally, the tremendous number of immigrants presented a great need for low income housing and gave rise to overcrowded tenements and urban slums.⁷

As a result of these deplorable conditions, many people desired to leave the cities in search of a better environment. Most

4. See RICHARD R. BABCOCK, *THE ZONING GAME* 149 (1966).

5. See UDALL, *supra* note 2, at 23.

The Louisiana Purchase extended the boundaries of the new nation beyond the rumor of wide rivers, almost beyond imagination. The deal . . . transferred an area as large as Western Europe for a price of less than three cents an acre. Napoleon himself gave this salute to Jefferson's statesmanship: 'This accession of territory consolidates the power of the United States forever, and I have given England a maritime rival who sooner or later will humble her pride.'

Id.

6. See KENNETH T. JACKSON, *CRABGRASS FRONTIERS: THE SUBURBANIZATION OF THE UNITED STATES* 70 (1985). The concentration of population in the cities was due, in part, to the movement of Americans from farms to cities. However, the majority of residents in the cities came from Europe. "Although only one-third of all Americans lived in cities in 1890, two-thirds of all immigrants did. By 1910, about 80 percent of all new arrivals at Ellis Island were remaining in cities, as were 72 percent of all those 'foreign born.'" *Id.*

7. SIMON EISNER ET AL., *THE URBAN PATTERN* 102-03 (6th ed. 1993).

city dwellers, however, could not afford to leave because transportation (predominantly the trolley) was limited and because suburban housing was often only available for the wealthy. However, in the 1920s, with the rising popularity and availability of the automobile, Americans began to leave the cities for the suburbs.⁸ This trend was abruptly halted when the stock market crashed in 1929 and the Great Depression ensued.⁹

Following World War II and its resultant economic boom, the movement of the nation's population to the suburbs resumed. This decentralization, however, extended far beyond the modest early 20th century movement of people out of the cities. Instead, it became a dramatic, extraordinarily consistent, four-decade process characterized by a massive shift in the location and design of housing, shopping, work places and jobs, which is projected to continue for the foreseeable future.¹⁰

B. *Federal Incentives*

Various federal policies and programs have powerfully propelled the suburbanization of America.¹¹ For example, in 1944,¹² the Federal Highway Program substantially influenced land development patterns in the United States.¹³ Intending to stimu-

8. See JACKSON, *supra* note 6, at 174-77. "Between 1920 and 1930, when automobile registrations rose by more than 150 percent, the suburbs of the nations 96 largest cities grew twice as fast as the core communities." *Id.* at 175.

9. *Id.* at 187.

10. EDWIN S. MILLS, *LARGE METROPOLITAN AREAS: THEIR FUNCTIONS AND PROSPECTS*, NATIONAL RURAL STUDIES COMMITTEE: A PROCEEDING, 94, 97 (E. Castle, ed., May 1992).

11. See James A. Kushner, *The Reagan Urban Policy: Centrifugal Force in the Empire*, 2 UCLA J. ENVTL. L., 209, 210 (1982); see generally JACKSON, *supra* note 6, at 190-218 (provides an in depth analysis of the impact of federal housing programs on the development of suburbia).

12. HOUSING FOR ALL UNDER LAW 29-30 (Richard P. Fishman ed., 1978). Although the federal highway program began in 1916, it was not until urban roads became eligible for assistance in 1944 that the system greatly impacted development patterns in the United States. *Id.*

13. Probably there is no more important single determinant of the timing and location of urban development than highways. Highways in effect create urban land where none existed before by extending the commuting distance from existing cities. The low density pattern found in most of the Nation's suburban area would never have been possible without the effect of high-speed highways in reducing the importance of compact urban development. As highways stretch out from existing urban areas, development quickly follows, with even the most carefully considered plans and zoning ordinances rarely proving a match for the devel-

late the economy by creating construction jobs, the federal government invested billions of dollars to build freeways, interchanges, and interstate highways, and to improve local roads.¹⁴ These programs also encouraged the residential and commercial development of previously inaccessible and remote areas. In addition, suburbanization was accelerated by federal housing programs¹⁵ and the imposition of federal regulations on the banking industry. Under these new federal programs, private banking institutions issued mortgages secured by the Federal Housing Administration (FHA) through loan guarantees. These guarantees reduced the bank's risk in issuing loans and resulted in lower interest rates for borrowers. More importantly, these guarantees resulted in the issuance of long term, low down payment mortgages that made housing affordable to a significantly larger percentage of the population.¹⁶

The FHA set standards for the types of houses that qualified for federally guaranteed mortgages. In general, its program favored the purchase of newly constructed, single-family, detached homes. Such dwellings were being built on the periphery of the cities where vacant land was inexpensive.¹⁷ Thus, by providing affordable loans for home purchases, the federal government's programs and regulations not only enabled middle and moderate income families to migrate from the city, made possible by the federally funded highway program, but also determined in what direction that migration would spread.

opment pressures generated.

Id. at 30-31 (quoting NAT'L COMM'N ON URBAN PROBLEMS, *BUILDING THE AMERICAN CITY* (1968)).

14. See KUNSTLER, *supra* note 3, at 106, 107. In 1956, Congress approved the Interstate Highway Act that provided for 41,000 miles of new expressways. The program was financed almost entirely by the federal government, with the states only contributing 10% of the cost. *Id.*

15. HOUSING FOR ALL UNDER LAW, *supra* note 12, at 17. Federal programs included the Federal Housing Administration, the Federal Savings and Loan Insurance Corporation and the Federal National Mortgage Association. *Id.*

16. KUNSTLER, *supra* note 3, at 102. Prior to 1929, a ten year mortgage was considered "long-term" and it was not uncommon for a bank to require a 30% to 50% down-payment. Under the new FHA rules, mortgages were extended to 20 or 30 years and the down-payment reduced to 10%. *Id.*

17. *Id.*

C. Current Development Patterns: Urban Sprawl

The terms "urban sprawl"¹⁸ and "suburbanization"¹⁹ are often used to describe the continuous out-migration of the American economic and population base from its central cities that has occurred since World War II.²⁰ As a result of these patterns of development, downtowns no longer dominate metropolitan regions²¹ as the location of most employers, office space and housing, or as the most frequent destination to shop or play. Instead, major cities are surrounded by seas of low density residential development, highlighted by "agglomerations" of development, often referred to as "Edge Cities"²² or "suburban megacenters," where commercial, retail, office, and entertainment development has occurred.²³

By 1990, 78% of all Americans lived in metropolitan re-

18. James A. Kushner, *A Tale of Three Cities: Land Development and Planning for Growth in Stockholm, Berlin and Los Angeles*, 25 URB. LAW. 197, 204 (1993). "Urban Sprawl . . . reflects a pattern of virtual nonexistent regulatory urban boundaries - where developers are free to leap frog out from developed to less expensive land on the community's fringe." *Id.* See HOUSING FOR ALL UNDER LAW, *supra* note 12, at 9. Urban sprawl is "the sporadic pattern of growth by which close-in, more expensive land surrounding the urban core is withheld from development, while less expensive land—often scattered in isolated locations on the urban fringe—is developed." *Id.*

19. See KUNSTLER, *supra* note 3, at 15. Additional terms used to describe this movement away from the cities include "sprawl," "conurbation," "Megalopolis," and "Galactic Metropolis." See John Kincaid, *Regulatory Regionalism in Metropolitan Areas: Voter Resistance and Reform Persistence*, 13 PACE L. REV. 449, 451-52 (1993). Negative terms were used to describe the development of areas outside of the cities in order to facilitate public acceptance of reform. *Id.*

20. See Robert Gerloff, *Rediscovering the Village*, UTNE READER, May-June 1992, at 93. "The United States is poised to become the first suburban-majority nation in human history. The 1990 census showed that nearly as many Americans now live in suburbs as live in cities, small towns and rural areas combined - a fact with all sorts of implications for our future." *Id.*

21. See JACKSON, *supra* note 6, at 5. "The United States Bureau of Census defines metropolitan areas as agglomerations with a central city of fifty thousand plus nearby areas with a 'significant level' of commuting into the city and a specified amount of urban characteristics." *Id.*

22. JOEL GARREAU, *EDGE CITY: LIFE ON THE NEW FRONTIER* 6-7 (1991).

23. See Andres Duany & Elizabeth Plater-Zyberk, *The Second Coming of the Small Town*, UTNE READER May-June 1992, at 97. "All of the elements of the traditional town exist in the modern American suburb. For various historical reasons, though, they have been improperly assembled. There are housing 'clusters,' office 'parks,' and shopping 'centers.' These elements have the makings of a great cuisine, but they have never been properly combined." *Id.*

gions, however, 46% of that population lived in the suburbs.²⁴ Shopping facilities, including huge new malls with large parking lots, were built to serve the new suburban residents.²⁵ As a result, today, there is a higher volume of retail sales in the malls of suburbia than in the downtown areas of many central cities. For example, in California, more retailing occurs in the South Coast Plaza in Orange County than in downtown San Francisco.²⁶ Similarly, more shoppers frequent the malls of King of Prussia in Chester County, Pennsylvania than shop in downtown Philadelphia.²⁷ During the 1970s, America's shift from a manufacturing to a service economy created a demand for more office space. Most of that demand was met in the suburbs.²⁸ This expansion of office space in the suburbs occurred very rapidly, twice as fast as the shift in population. In 1970, 25% of the office space in the United States was located in the suburbs, but by 1990, that figure had risen to 57%.²⁹

A number of factors contributed to the transition of office space to suburbia: the availability of cheaper land, lower rents, the option of shipping freight by truck rather than rail, and the availability of skilled workers. This trend was demonstrated in Atlanta where, from 1978 to 1983, the city's share of regional office space slipped from 34% to 26%, while the pace of office construction in Atlanta flourished. The loss was the result of massive construction of new office space in the suburbs.³⁰ Similarly, from 1960 to 1980, Los Angeles's share of regional office space fell from 60% to 34%.³¹ In New York, from 1982 to 1984,

24. U.S. DEP'T OF COMMERCE, *METROPOLITAN AREAS AND CITIES* 1 (1992). These figures become even more dramatic when compared with statistics from 1950, when 56% of the nation's total population lived in metro regions, but only 23% of that population lived in the suburbs. *Id.*

25. GARREAU, *supra* note 22, at 4.

26. Christopher B. Leinberger & Charles Lockwood, *How Business is Reshaping America*, *THE ATLANTIC MONTHLY*, Oct. 1986, at 44.

27. Neal R. Peirce & Robert Guskind, *The Mid Atlantic's Suburban Growth Boom: At What Cost?* *BELL ATLANTIC Q.*, Spring 1986, at 13.

28. *HOUSING FOR ALL UNDER LAW*, *supra* note 12, at 5.

29. Robert Fishman, *America's New City: Megalopolis Unbound*, *WILSON Q.*, 1990, at 27.

30. Leinberger & Lockwood, *supra* note 26, at 46. From 1980 to 1985, while Atlanta built 4.3 million square feet of new office space, two suburban centers built 18.2 million. *Id.*

31. *Id.* at 44.

Manhattan's share of regional office space fell from 75% to 67%, despite the city's considerable efforts to add new office space.³²

America's industries also relocated to suburbia. Between 1947 and 1967, America's sixteen largest and oldest central cities lost an average of 34,000 manufacturing jobs each, while their suburbs gained an average of 87,000 jobs. This trend continued through the 1970s as America's industrialized cities lost from 25% (Minneapolis) to 40% (Philadelphia) of the manufacturing jobs that remained.³³

D. *Land Use Regulation to Control Sprawl*

In the wake of this movement to suburban territory, the nation's cities have suffered severe economic disinvestment.³⁴ Environmentally pristine areas have been consumed and limited natural resources have been threatened. Yet, despite these profound detrimental impacts of unguided growth, the federal government has never adopted a comprehensive national growth plan or land use policy to balance economic growth, environmental conservation, and urban reinvestment.³⁵ In addition, no national administration has addressed the question of what type of metropolitan development patterns are compatible with national goals.³⁶

32. Peirce & Guskind, *supra* note 27, at 10.

33. Fishman, *supra* note 29, at 36.

34. See *The Anatomy of Opportunity*, Policy Research Rep., Special Section on American Cities, URB. INST., Fall 1992 at 13.

Today, the city, especially the central city, is seen as a dead end place to live.

Most of those who have a choice are thought to have moved away. Those who remain are thought to be increasingly isolated from strong job markets, good schools, and the kind of connections and experience that help people get ahead.

Id.

35. HOUSING FOR ALL UNDER LAW, *supra* note 12, at 16.

36. Several attempts have been made to establish "comprehensive" policies, however, none have been successful. The Jackson-Udall federal land use bill, supported by President Nixon, passed the Senate three times in the early 1970s, but never passed the House. Modelled after the American Law Institute's Model Land Development Code, the Jackson-Udall bill proposed grants to states to develop programs to protect areas of critical state concern and to establish state or regional permits for large developments. After the bill failed a third time, it was never reintroduced in any subsequent session of Congress. Another attempt, the Model Cities Program, emphasized comprehensive planning process, but its focus was limited to the inner city. The United States Department of Housing and Urban Development pursued an "urban policy" under President Carter, but it never became a significant force in guiding federal spending programs and regulatory policies.

As a result, the question of how America should develop has been left almost exclusively to the states, the repositories of legislative power under this nation's federal system.

In the 1920s, many state legislatures authorized local governments to regulate the use of land through zoning.³⁷ These enabling statutes were exceedingly broad and essentially delegated the states' inherent authority to regulate land development to individual municipalities. Today, however, local comprehensive zoning regulations are ineffective to prevent the negative impacts of growth.³⁸

While the municipal recipients of comprehensive zoning power initially were relatively isolated and compact cities, today, there exist 86,692 units of local government in the United States that exercise this land use authority.³⁹ These municipalities no longer exist in isolation but are interconnected and interdependent, sharing many of the negative effects of sprawling development. A locality's authority to regulate land use, however, extends only to its political boundaries. Today's governmental units are incapable of independently affecting such interests as environmental protection, affordable housing, transportation, economic growth, and the preservation of agricultural lands. Because these interests transcend the boundaries of the municipality, they require regional solutions.⁴⁰ Indeed, zoning's historic function was to separate land uses and to control the neighborhood impacts of development, not to shape community development patterns over time.

One result of current land use policies is the expansion of the land coverage of metropolitan regions in gross disproportion

37. For a comprehensive discussion of the evolution of "home rule," see generally John R. Nolon, *The Erosion of Home Rule Through the Emergence of State Interest in Land Use Control*, 10 PACE ENVTL. L. REV. 497 (1993).

38. Robert H. Freilich & Linda Kirts Davis, *Saving the Land: The Utilization of Modern Techniques of Growth Management to Preserve Rural and Agricultural America*, 13 URB. LAW. 27, 30 (1981).

39. Kincaid, *supra* note 19, at 450. In his article, John Kincaid finds the extensive number of units of local government "the principal sociopolitical reality underlying efforts to consolidate local governments in metropolitan areas." *Id.*

40. In the second article of this symposium edition, Professor John R. Nolon documents that the impacts of regional land use patterns dictate that to be "comprehensive" today, land use planning must respond to regional needs. John R. Nolon, *Comprehensive Land Use Planning: Learning How and Where to Grow*, 13 PACE L. REV. 351, 373-74 (1993).

to the expansion of their resident populations. For example, in the past twenty years, the land used for development in the New York metropolitan region increased by 65%, while its population increased by only 8%.⁴¹ Similarly, from 1970 to 1990, the amount of land committed to development in Seattle increased 87%, while the area's population increased only 38%.⁴² Developed land in Denver today encompasses 350 square miles. Over the next twenty years, that area is estimated to triple to 1,000 square miles while its population is projected to increase by only a third.

There exists a twenty to thirty year capacity for accommodating future development within the nation's vastly expanded, Edge City-dominated, freeway-connected, metropolitan regions. However, that growth will come at a very high price economically, environmentally and socially. With the automobile functioning as the nearly exclusive regional transit "system," the sheer size and amount of land encompassed by metropolitan regions generates longer trips, increased fuel consumption, and air pollution. As these vast areas continue to be developed, wetlands will vanish, water supplies will be threatened, and valuable agricultural land will disappear. Taxpayers and utility ratepayers will suffer because as regions expand, the costs of providing public services such as police and fire departments, electricity, sewer systems and water, will increase.⁴³ Aside from the high costs of servicing sprawling development,⁴⁴ the public is also adversely

41. Henry R. Richmond, *Saving Our Cities*, DEVELOPMENTS, Sept. 1992, at 10, 11.

42. *Id.* See also, JOHN M. DEGROVE, LINCOLN INST. OF LAND POLICY, PLANNING & GROWTH MANAGEMENT IN THE STATES 117-120 (1993).

With the recovery of Washington's economy in the mid-1980s, unmanaged growth produced the predictable negative impacts, and citizens reacted with an increasing degree of frustration at the inability of local, regional, or state governments to deal with the problem By 1989 the negative impacts of unmanaged growth . . . had attracted considerable support for growth management

Id. at 119-20. As a result, "Washington was the first state in the 1990s to adopt a comprehensive growth management system." *Id.* at 117.

43. See generally Julie Hayward Biggs, *No Drip, No Flush, No Growth: How Cities Can Control Growth Beyond Their Boundaries by Refusing to Extend Utility Services*, 22 URB. LAW. 285 (1990) (provides an analysis of the City of Redlands, California and its attempts to control growth by declining to extend municipal services such as water and sewer lines outside the city boundaries).

44. See Kevin Kasowski, *The Costs of Sprawl, Revisited*, DEVELOPMENTS, Sept. 1992, at 1 (describing a study performed by Rutgers University that determined sprawl-

affected by uncontrolled growth because it erodes the local tax base,⁴⁵ restricts the accessibility of jobs and housing to less affluent people,⁴⁶ and isolates racial minorities and the poor.⁴⁷

E. Outlook to 2050

Modest population forecasts in the past decade have induced a sense of complacency about the growth of sprawl. However, in recent years, these forecasts have been revised upward. Only four years ago, the Census Bureau estimated U.S. population might be below 300 million in 2050.⁴⁸ Current estimates now project "the nation's population to increase by a stunning 50%, to 383 million in the year 2050."⁴⁹ From 1930 to 1991, U.S. population grew by 103%.⁵⁰ Thus, a 50% increase over the next half century is not unprecedented. However, this future increase begins from a base of 255 million people. Unlike the increase during the earlier period, this future increase will occur at a time when investment, productivity, and the standard of living have been falling, cities have been failing, and the environment has been threatened. In addition, there are many current concerns regarding the need to reinvest in the nation's existing schools, housing and infrastructure.⁵¹

While growth in the five largest metropolitan regions is expected to wane, development in the other regions will continue to increase about 50% faster than the rate of the total U.S. population.⁵² About 80% of the growth in both population and jobs is projected to occur in a "fifth generation" of Edge Cities or

ing development patterns cost between seven and eight billion dollars over twenty years).

45. HOUSING FOR ALL UNDER LAW, *supra* note 12, at 4-9.

46. *The Job-Housing Link*, N.Y. TIMES, Nov. 18, 1980, at A23.

47. Roberto M. Fernandez & David Harris, *Social Isolation and the Underclass in DRUGS, CRIME AND SOCIAL ISOLATION* 257 (Adele V. Horrell & George E. Peterson eds., 1992).

48. Lucinda Harper, *Census Bureau Lifts Population Forecast Citing Fertility, Immigration, Longevity*, WALL ST. J., Dec. 4, 1992, at B1.

49. *Id.* Underestimated were black, Hispanic and Asian fertility rates, as well as immigration and longevity.

50. *Id.*

51. Rand Corporation demographer, Peter Morrison, believes the impacts of population growth will be "magnified on a regional basis," and "the school system, child care facilities, and infrastructure will have to change." Harper, *supra* note 48, at B1.

52. MILLS, *supra* note 10, at 98.

suburban villages, even further from the central cities than the first "four generations."⁵³ This additional growth will result in already huge metropolitan regions becoming even larger.⁵⁴ Similar expansive growth is projected for smaller metropolitan areas.⁵⁵

Plagued by housing shortages, traffic congestion and pollution, Americans nationwide have become increasingly discontented with the state of their communities.⁵⁶ More growth in the form of suburbanization, however, is not the solution.⁵⁷ Rather, Americans have voiced their desire to return to "traditional towns," where shopping, housing and work are within walking distance of each other.⁵⁸ As an additional benefit, these towns are more cost efficient than suburbanization because they require less land, streets, water, sewer lines and infrastructure.⁵⁹

The failure to plan is to blame for much of the negative results of urban sprawl. What is needed to correct the current development patterns is comprehensive planning at the state, regional and local levels that permits growth where appropriate, while providing for transportation, housing, and the preservation of the environment and natural resources. In 1973, Oregon, one of the fastest growing states in America,⁶⁰ undertook a bold approach to land use development. Oregon's program sought to protect agricultural and forest land from development and encourage appropriate residential, business and commercial

53. GARREAU, *supra* note 22, at 11. "It is common for a first generation Edge City to arise ten miles from an old downtown, and the next generation one twenty miles beyond that." *Id.*

54. Christopher B. Leinberger, Edge City and ISTEA: So What?, Comments at the Symposium of the U.S. Dep't of Transp. (Aug. 13, 1992).

55. See, e.g., SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, CHARLESTON METROPOLITAN GROWTH ANALYSIS: PHASE ONE RESULTS, CHARLESTON (1992). "Local governments have allocated over four times more land for projected growth than is actually needed." *Id.* at 5.

56. Duany & Plater-Zyberk, *supra* note 23, at 97.

57. *Id.* at 99. "Building more highways to reduce traffic congestion is an exercise in futility. Whenever it is done, more people take to their cars, and before long the roads are as clogged as ever." *Id.*

58. See *Id.*; see also Todd Bressi, *The Neo Traditional Revolution*, UTNE READER, May/June 1992, at 101 (alleging the "hot new trend" in urban planning is the neo-traditional communities being developed by Duany and Plater-Zyberk).

59. Duany & Plater-Zyberk, *supra* note 23, at 98.

60. William K. Reilly, Foreword to H. JEFFREY LEONARD, MANAGING OREGON'S GROWTH at xi (1983).

growth, while minimizing the cost of taxpayer financed services to accommodate that development. These goals were accomplished in Oregon by adopting an ambitious land use management program that emphasizes the interdependence of conservation and development, without sacrificing local control and property rights.

In 1966, Richard Babcock posed the essential question to be addressed by federal and state lawmakers considering comprehensive land use reform addressing the private and public costs of urban sprawl.⁶¹ Babcock stated:

When there are conflicting interests [regarding land use], it is patently necessary for someone to determine which of these are valid in a society based upon the belief in private property and the mobility of the individual. First it is necessary to identify those interests. The question then arises who should and will referee the contest: the municipal legislature, the state legislature, the courts, or the administrators?⁶²

The Oregon plan provides answers to this critical question and thereby offers a model for land use reform that should be encouraged by federal policy and emulated in other states.⁶³

II. Oregon Land Use Program: A Model for National Reform

A. Introduction

Following World War II, Oregon experienced rapid growth; its population increased over 50% in five years.⁶⁴ Most of these new residents settled in the Willamette Valley, where 80% of Oregon's total population lives. The Willamette Valley, however, is also one of the most productive farming areas in the United States. The rapid development of the Valley concerned many residents because it dramatically reduced the quantity of land available for farming, an important part of Oregon's economy, and because it caused environmental degradation and a deple-

61. BABCOCK, *supra* note 4, at xvi.

62. *Id.*

63. See Douglas R. Porter, *State Growth Management: The Intergovernmental Experiment*, 13 PACE L. REV. 481, 481 (1993) (describing the adoption of similar growth management statutes in eight other states).

64. LEONARD, *supra* note 60, at 1. In 1940, Oregon's population was 1 million; it grew to 1.5 million by 1950, 2.1 million by 1970, and 2.6 million by 1980. *Id.*

tion of natural resources.⁶⁵

In response, the Oregon legislature made several attempts to control the development and limit its negative impacts. Accordingly, in 1965, Oregon passed a clean air act and later issued bonds to cover the cost of pollution abatement. In addition, legislation was enacted granting lower tax assessments for land zoned exclusively for farm use. These measures, however, proved insufficient to stem the sprawling residential development that continued to consume large quantities of the state's prime farmland and damage the environment.⁶⁶

B. *The Comprehensive Land Use Planning Act of 1973*

In 1973, after a four-year-long debate, the Oregon legislature, backed by great public support, passed a comprehensive land use act, known as Senate Bill 100 (S.B. 100),⁶⁷ declaring that the state has an interest in how land is used.⁶⁸

Uncoordinated use of lands within this state threaten [sic] the orderly development, the environment of this state and the health, safety, order, convenience, prosperity and welfare of the people of this state [I]n order to assure the highest possible level of liveability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole.⁶⁹

Under S.B. 100, local governments remain the primary agencies responsible for land use planning. However, all localities, cities and counties are required to prepare and adopt comprehensive plans consistent with state goals.⁷⁰ The legislation also created the Land Conservation and Development Commission⁷¹ (LCDC), a state agency charged with developing and

65. *Id.* at 5.

66. *Id.* at 6. For example, "between 1959 and 1969, the amount of available farmland in Clackamas County . . . shrank from 319,000 acres to 210,000—a 34 percent decline. Much of this farmland was lost to new suburban developments built further and further from Portland." *Id.*

67. Now enacted as OR. REV. STAT. §§ 197.000-.860 (1991).

68. Carl Abbott & Deborah Howe, *A Land Mark Decision*, OREGONIAN, June 13, 1993, at J1.

69. OR. REV. STAT. §§ 197.005, .010 (1991).

70. *Id.* §§ 197.005(3), .010.

71. *Id.* § 197.030 (1991).

adopting the statewide planning goals and guidelines with which local comprehensive plans must comply.⁷²

In late 1974, the LCDC adopted fourteen statewide planning goals (later increased to nineteen) after more than a year of public hearings and workshops.⁷³ Each goal addresses a specific interest that the state seeks to protect.⁷⁴ In addition to preparing the goals, the LCDC developed and adopted guidelines. While a "goal" is defined as a "mandatory statewide planning standard,"⁷⁵ the guidelines are "suggested approaches designed to aid cities and counties in preparation, adoption and implementation [of the goals]."⁷⁶

Under the legislation, each local government must submit its plan to the county, and each county is responsible for insuring that the overall county plan and the plans of its constituent cities and villages are compatible with state goals.⁷⁷ In addition,

72. *Id.* § 197.040(2)(e) (1991).

73. Citizens' involvement in the planning process is a critical element of the statute and their participation in the creation of the goals was mandated by the statute. OR. REV. STAT. § 197.160 (1991).

74. OREGON LAND CONSERVATION AND DEVELOPMENT COMM'N (LCDC), STATEWIDE PLANNING GOALS (1993). "Oregon's 19 statewide planning goals have been adopted as administrative rules (OAR 660, Division 15) in accordance with ORS 197.225 - 245." *Id.* The goals are dedicated to the following interests:

1. Citizen Involvement;
2. Land Use Planning;
3. Agricultural Lands;
4. Forest Lands;
5. Open Spaces, Scenic and Historic Areas, and Natural Resources;
6. Air, Water, and Land Resources Quality;
7. Areas Subject to Natural Disasters and Hazards;
8. Recreational Needs;
9. Economic Development;
10. Housing;
11. Public Facilities and Services;
12. Transportation;
13. Energy Conservation;
14. Urbanization;
15. Willamette River Greenway;
16. Estuarine Resources;
17. Coastal Shorelands;
18. Beaches and Dunes;
19. Ocean Resources.

75. OR. REV. STAT. § 197.015(8) (1991).

76. *Id.* § 197.015(9) (1991).

77. *Id.* § 197.255 (1991).

the county must assure that these plans are compatible with each other and create "an integrated and comprehensive plan for the entire area of the county."⁷⁸

The county and local plans must then be submitted to the LCDC for "acknowledgement of compliance" with statewide planning goals.⁷⁹ If the plan is acknowledged, it may be implemented locally without further reference to the goals. However, if there is no plan, or if the plan is not acknowledged by the LCDC, each development decision must be considered in light of the state's goals. This case-by-case procedure is very time consuming and costly for both the municipality and the individual seeking a development permit. Therefore, it is in the best interests of both the locality and the public to engage in thorough comprehensive planning, as it not only saves time but also provides predictability and convenience.⁸⁰

The growth management objectives of the state's plan are to "geographically bound urban development, provide adequate housing and urban development within the boundaries, and prevent urban encroachment on important natural resource lands outside the boundaries."⁸¹ To contain outward growth of the state's urban areas, cities and counties must cooperate in determining urban growth boundaries (UGBs), to "identify and separate urbanizable land from rural land."⁸² In creating the UGBs, counties and cities must include land currently in urban use and all land necessary for estimated urban growth.⁸³ It is important to note that this statute has been implemented without sacrificing the central role of local government officials, who continue to have primary planning and zoning authority.

78. *Id.* § 197.190 (1991). In the original draft of S.B. 100, 14 regional planning districts would have operated "as mandatory councils of governments to coordinate local plans." LEONARD, *supra* note 64, at 9. This proposal was widely opposed, being perceived as an intervention with local autonomy. *Id.*

79. OR. REV. STAT. § 197.251 (1991).

80. DEGROVE, *supra* note 42, at 148.

81. *Id.* at 149.

82. LCDC, *supra* note 74, at 13.

83. LEONARD, *supra* note 64, at 158. Goal 13 guidelines: plans should accommodate the need for further urban expansion, "taking into account the growth policy of the area and population needs (by the year 2000)." *Id.*

C. *Results on the Ground*

Could this be America? A vibrant downtown, the sidewalks full of purposeful-looking citizens, clean, well-cared for buildings, electric trolleys, shopfronts with nice things on display, water fountains that work, cops on bikes, greenery everywhere?⁸⁴

The Oregon program, by taking a balanced and comprehensive approach, has been successful in providing affordable housing, encouraging economic development, preserving the environment, creating a viable and cost effective mass transportation system and preserving agricultural land. Today, each of Oregon's 241 cities has an urban growth boundary, Portland has become a viable urban center, and the supply of affordable housing has been increased significantly. Additionally, some 25 million acres of agricultural and forest land have been rezoned exclusively for farm or forest use, while approximately 750 thousand acres of "Exception" land outside urban growth boundaries has been designed for rural residential development. A review of the concrete results of the Oregon land use initiative illustrates why it has received such broad-based support throughout the state.

1. *Support for Affordable Housing*

Oregon's Goal 10, the housing goal, requires all cities and counties to plan for a variety of housing types, including single and multi-family dwellings.⁸⁵ In addition, municipalities must create housing plans that accommodate the needs of all residents within the region, regardless of income levels, as far as practicable.⁸⁶ In interpreting these requirements, the LCDC held that:

84. KUNSTLER, *supra* note 3, at 200 (discussing the attributes of downtown Portland, Oregon).

85. LCDC, *supra* note 74, at 11; Stephen D. Galowitz, *Interstate Metro-Regional Responses to Exclusionary Zoning*, 27 REAL PROP. PROB. & TR. J. 49, 89 (1992). For further information on affordable housing in Oregon, see Morgan, *infra* note 87 (an in-depth analysis of LCDC and the City of Happy Valley where the city was prevented from continuing exclusionary zoning practices in an attempt to prevent development of varied housing types within the area). See also Norman Williams, Jr., *A Look At Implementation*, 14 ENVTL. L. 831 (1984) (comparing Oregon's efforts at preventing exclusionary zoning with New Jersey's system).

86. LCDC, *supra* note 74, at 11.

Goal 10 speaks of the housing needs of Oregon households, [not the residents of the locality]. Its meaning is clear: planning for housing must not be parochial. Planning jurisdictions must consider the needs of the relevant region in arriving at a fair allocation of housing types. Goal 10 represents the broader interests of all Oregon households.⁸⁷

By requiring a variety of housing types, Goal 10 seeks to prevent exclusionary zoning practices. In addition, Oregon's regulations prohibit protracted review procedures that might discourage development. Review procedures are required to be "clear and objective" and to not cause "unreasonable cost or delay."⁸⁸ Another measure enacted to ensure the availability of affordable housing is the requirement that municipalities must plan for, and provide, adequate infrastructure to promote appropriate housing development in the area.⁸⁹

The supply of affordable housing in Oregon has increased as a result of state and regional laws that require municipalities throughout major metropolitan areas to zone at least 50% of their vacant residential land to provide for the development of housing types other than single-family detached dwellings.⁹⁰ These policies have resulted in an increase in the amount of land zoned for multi-family housing and a decrease in the average vacant single-family lot size.⁹¹

A recent survey conducted jointly by 1000 Friends of Oregon⁹² and the Home Builders Association of Metropolitan Port-

87. Terry D. Morgan, *Exclusionary Zoning: Remedies Under Oregon's Land Use Planning Program*, 14 ENVTL. L. 779, 783 (1984) (quoting LCDC decision in *Seaman v. City of Durham*, LCDC 77-025).

88. Galowitz, *supra* note 85, at 89.

89. *Id.*

90. Abbott & Howe, *supra* note 68, at J1.

91. 1000 Friends of Oregon & The Home Builders Ass'n of Metropolitan Portland, *Managing Growth to Promote Affordable Housing: Revisiting Oregon's Goal 10, Executive Summary*, September 1991 at 4. A 1982 study conducted by 1,000 Friends of Oregon showed that "implementation of the [Metropolitan] Housing Rule resulted in a 400% increase in land zoned for multiple family use (includ[ing] townhouses and other 'attached' dwellings); and . . . that the average (minimum) sized lot allowed by local zoning dropped from 13,000 sq. ft. in 1978 (pre-Housing Rule) to 8,300 sq. ft. in 1982 (post implementation)." *Id.*

92. DeGROVE, *supra* note 42, at 149. 1,000 Friends of Oregon is a "'watchdog' organization [that] has devoted itself to the full implementation of the land use planning program and the maintenance of a coalition for its support." *Id.*

land concluded that Oregon's "land use management goals and efforts to promote affordable housing in the Portland metropolitan area are working."⁹³ The year-long study showed that housing in the Portland area was more affordable than comparable accommodations in other non-regulated West Coast areas, such as San Diego, Los Angeles, and Seattle. In the Portland area, "slightly more than three-quarters of the region's households can afford to rent a mid-priced, two-bedroom apartment, while two-thirds of them can afford to buy a mid-priced, two bedroom house."⁹⁴ These findings dispel the myth that land regulations, particularly UGBs, cause inflated land values and result in higher housing costs.

2. *Transportation*

Pursuant to Goal 12, the transportation goal, municipalities must plan to "provide and encourage a safe, convenient and economic transportation system."⁹⁵ The needs of the state, region and locality must be considered in the plan, as well as the use of various transportation systems including mass transit, air, rail, bicycle and pedestrian.⁹⁶ To effectuate this goal, Portland has revived the trolley, known as "light rail," to provide mass transportation from the suburbs into the city. The line runs down the center of the freeway and is powered by electricity. The system has been so successful that the voters recently approved a bond issue to finance the development of a second line.⁹⁷

The City of Portland has implemented other measures aimed at dissuading automobile use and encouraging the use of mass transit. To facilitate the movement of those individuals who enter the city by light rail, free bus service is provided within the downtown area. In addition, there is a limit to the number of parking spaces that can be built within city limits. Portland's strategy is to make mass transit more convenient and auto transit less convenient, so as to reduce air pollution, vehicle

93. Ken Hamburg, *Study Links Affordable Housing to Land Use Laws*, OREGONIAN, Oct. 10, 1991, at D16.

94. *Id.*

95. LCDC, *supra* note 74, at 12.

96. *Id.*

97. KUNSTLER, *supra* note 3, at 202-03.

miles travelled and traffic congestion.⁹⁸

In 1991, Oregon's Land Conservation and Development Commission adopted a precedent-setting, comprehensive administrative rule governing state and local government transportation planning.⁹⁹ The new rule addresses numerous topics relating to transportation facility planning, land use, development design and intergovernmental coordination.¹⁰⁰ It requires all metropolitan areas to plan for the development of alternative transportation methods including bicycle and pedestrian, and the reduction of vehicle miles by 20% over the initial thirty year planning period.¹⁰¹ Local governments can only meet this goal by linking transportation with other land use decisions such as economic development and housing.¹⁰²

3. *Economic Development*

Goal 9 requires municipalities to plan in order to "diversify and improve the economy of the state."¹⁰³ However, during the early 1980s when the national economy was in a recession, the Land Conservation and Development Commission came under attack with opponents alleging that the land use regulations inhibited, rather than promoted, economic growth.¹⁰⁴ Governor

98. *Id.* at 203.

99. The administrative rule, developed by the Department of Transportation, in conjunction with the Department of Land Conservation and Development, took 18 months to craft and was later adopted by the LCDC. See OR. ADMIN. R. 731-15 (1991).

100. *Id.*

101. *Id.*

102. Abbott & Howe, *supra* note 68, at J1. The new regulation has come under attack from several business and building organizations who have persuaded the Land Conservation and Development Commission to extend the deadline for cities and counties to make rules in support of this regulation. These groups, among others, seek to form a task force to gather data and study the potential effects of this new regulation on economic development, affordable housing and other concerns. The new deadline is set for May 8, 1994. Janet Goetze, *Group to Ask for Delay in Land Use Plans*, OREGONIAN, July 12, 1993, at B3.

103. LCDC, *supra* note 74, at 11.

104. See Ernest G. Niemi, *Oregon's Land Use Program and Industrial Development: How Does the Program Affect Oregon's Economy*, 14 ENVTL. L. 707 (1984).

Critics of the program claim that it cripples Oregon's economy by driving away firms that seek to move to Oregon. They argue that these firms bring new employment opportunities to Oregon and are, therefore, the key to economic recovery and development in the state. To support their arguments, the program's critics cite numerous examples of firms that sought to locate in Oregon but eventually

Atiyeh commissioned a task force to examine these allegations. After hearing testimony from over 400 Oregonians, the task force concluded that the economic problems experienced by the state were not the fault of the LCDC.¹⁰⁵

One of the most hotly debated issues involved the question of whether Oregon's land use program provided enough industrial land to attract industry to the state. In 1982, 1000 Friends of Oregon commissioned a study that compared the supply of industrial land in the state's ten largest urban areas before and after the implementation of Oregon's Land Use Act. The study showed that the quantity of industrial land actually increased 79% after regulation, rising from 15,964 acres to 28,581 acres.¹⁰⁶

In addition, Oregon's planning process has made easier the development of land designated as "industrial." Prior to S.B. 100, most industrial development required a time-consuming and costly zoning amendment to the county's plan. After the land use statute was enacted, land planned for industrial use was often already zoned for industrial use.¹⁰⁷ The state's planning requirements provide the predictability and efficiency in the development process that land developers value.

4. Agriculture

Although Oregon's comprehensive land use plan was originally enacted primarily to prevent sprawling development from consuming farmland, Goal 3,¹⁰⁸ dedicated to the preservation and maintenance of agricultural lands, is constantly under attack by realtors¹⁰⁹ and county officials. Currently, these interests are seeking to relax land use regulations that prohibit the development of land outside UGBs alleging that they "strangle legitimate development."¹¹⁰ Others call for stricter regulation because

went elsewhere because they could not locate a suitable site in a timely manner.
Id.

105. Abbott & Howe, *supra* note 68, at J1.

106. Henry R. Richmond, *Does Oregon's Land Use Program Provide Enough Desirable Land to Attract Needed Industry To Oregon?*, 14 ENVTL. L. 693, 694 (1984).

107. *Id.* at 696.

108. LCDC, *supra* note 74, at 4.

109. Although goal three has been attacked by realtors, it has maintained the support of homebuilders and developers.

110. Bill MacKenzie, *Land Use Reformists Appear Headed for Victory*, OREGONIAN,

"farm land . . . faces an uncertain future as urban development continues to apply pressure" ¹¹¹

Some critics argue that the state has failed in its ability to preserve farmland and point to development that occurs either due to the failure of a local government to implement the comprehensive plan properly, or the approval, in the planning process, of "exception" areas when preexisting partitioning and development on otherwise good farm and forest land were found to "precommit" land to nonfarm or nonforest uses. Much of this land is immediately outside of urban growth boundaries. The exception reclassifies the property or area and entitles the owner to develop it, rather than to use it exclusively for agriculture. Local governments are often pressured to misapply state-approved local ordinances to allow development on non-exception land in order to reap the reward of increased land value that residential rezoning brings.

Still, most commentators agree that S.B. 100 has stopped large scale conversion of farmland to development. ¹¹² One study showed that by 1987, 90% of land planned for Exclusive Farm Use (EFU) had been zoned accordingly. In addition, although some EFU land had been redesignated and included within Urban Growth Boundaries, these reclassifications have not been significant. ¹¹³

III. Conclusion

It has been twenty years since Oregon adopted the nation's first comprehensive land use planning act; its results offer much to celebrate. Portland has received great praise as a model of urban revitalization, ¹¹⁴ and was ranked as one of the nation's top

Apr. 18, 1993, at C6.

111. *Agriculture Has Rightful Place*, OREGONIAN, Nov. 30, 1991, at B4. It is important that organizations representing major rural landowners, such as the Oregon Farm Bureau Federation and the Oregon Forest Industries Council, supported Senate Bill 91 in the 1991 Oregon Legislature that would have tightened restrictions on partitions and dwellings unrelated to commercial farm and forest management. 1000 Friends of Oregon also supported this legislation as did the Metropolitan Home Builders Association. *Id.*

112. Terri Popp, *A Survey of Agricultural Zoning: State Responses To The Farmland Crisis*, 24 REAL PROP. PROB. & TR. J. 371, 390 (1989).

113. *Id.* at 390-91.

114. See *supra* note 84 and accompanying text.

"Green Cities."¹¹⁵ In addition, Oregon's approach to protecting the environment, such as its Ocean Resources Management Plan, provides a national model for the preservation of tidelands and open ocean resources by going "beyond standard coastal zone planning with its more limited emphasis on developable coastal lands."¹¹⁶ Environmental interests are pleased by the fact that over half of the plan's state-wide goals are designed to protect the environment, conserve natural resources and enhance open space.¹¹⁷ The Oregon system has also received praise for its innovative approach to transportation and "fair-share" housing.¹¹⁸

These accomplishments, however, do not come without some criticism and opposition. Legislators who wish to dismantle the Department of Land Conservation and Development are regularly elected. Bills have been introduced in each legislative session since 1973 that would have gutted the rural lands program, but none of these bills has passed. House Bill 3661 was supported by most of the key players in the debate, including 1000 Friends of Oregon. These legislative activities are perhaps the inevitable consequence of providing a responsible, if controversial, statewide framework for land development. Despite the continuing debate, which has been healthy, a clear majority of Oregonians value the state's comprehensive planning act, with voters rejecting four statewide referenda to change the system.¹¹⁹

115. WORLD RESOURCE INST., THE 1992 INFO. PLEASE ENV'T'L ALMANAC 169-186 (1992). The Green Cities Index was developed by Susan L. Cutter, a professor in the Department of Geography at Rutgers University. *Id.* at 179. Sixty four cities, with populations of over 250,000 were evaluated in eight different environmental categories: 1) waste, 2) water use and source, 3) energy use and cost, 4) air quality, 5) transportation measures, 6) toxic chemical accident risk, 7) environmental amenities, and 8) environmental risk. *Id.* at 170-71. The cities were then ranked according to their overall scores in these categories. *Id.* at 171-77. Portland ranked number one in water source, number two in air quality - ozone, and number four in environmental amenities, receiving a ranking as the twelfth best "Green City" in the study (top 20%). *Id.* at 179, 182, 185.

116. Abbott & Howe, *supra* note 68, at J1.

117. *See supra* note 74. Goals 4, 5, 6, 7, 8, 13, 15, 16, 17, 18, and 19 address environmental concerns.

118. *See supra* notes 85-86, 94 and accompanying text.

119. DeGrove, *supra* note 42, at 149.

The Oregon land use planning program . . . has sustained sufficient public support within the state to handily overcome repeated attempts by opponents to weaken it or dismantle it entirely. It was referred to and reaffirmed by the voters of the state in 1977, 1978 and 1982, with clear majorities. In 1984, an initiative in opposition

In 1991, Governor Barbara Roberts called on the people of Oregon to reaffirm their commitment to preserve "what makes Oregon Oregon: the clean air, pure water and open lands."¹²⁰ "Now is not the time to abandon our principles of planned growth and conservation. It's time to move forward again, fine-tuning the glitches, adjusting for new conditions, reacting decisively to new pressures, [and] working with every interest group."¹²¹

This innovation in land use planning and conservation, however, must not stop in Oregon. Sprawling development has led to disinvestment in our inner cities, degradation of the environment, depletion of natural resources, a lack of affordable housing, and the loss of agricultural land. There must be a firm commitment, by all the states, to address the detrimental effects of nearly half a century of unguided growth. Growth management, with a commitment to planning and to new, 'community-friendly' corrective development, is a viable solution to this dilemma.

America has learned an important lesson since its expansionist days, when the nation sought to conquer and exploit the "wilderness" with little regard for its impact: the land and its resources are not limitless. As a result, a new form of manifest destiny is sweeping across the country: from Oregon to Vermont, from Maine to Florida, nine states have adopted growth management statutes.¹²² These states seek to guide the responsible use of land in order to address a "wide range of 'quality of life' issues" including "concerns such as: keeping abreast of infrastructure needs as development occurs; properly balancing development and environmental protection; and promoting economic development, where that is needed, through positive efforts."¹²³

to the program was not even able to obtain the necessary number of signatures to be placed on ballot.

Id.

120. Barbara Roberts, *Opening Address*, 6 J. ENVTL. L. & LITIG. 105 (1991).

121. *Id.*

122. Porter, *supra* note 63, at 481. The states that have adopted land use planning or growth management systems include: Oregon (1973); Florida (1985); New Jersey (1986); Maine, Vermont, and Rhode Island (1988); Georgia (1989); Washington (1990) and Maryland (1992). California, North Carolina, Pennsylvania and Connecticut have formally considered similar steps. *Id.*

123. DEGROVE, *supra* note 42, at 2.

Today, the United States is struggling to develop innovative ways of dealing with the effects of over forty years of unguided growth. This concept, that land must be used responsibly, is not new, but has been part of our destiny since the nation's inception. Thomas Jefferson reminded Americans that "[w]hile the farmer holds title to the land, actually, it belongs to all the people because civilization itself rests on the soil."¹²⁴ If Jefferson were observing the modern scene, he would add to his concern for the farmer the other key interests whose well-being is tied to responsible land use patterns.

124. Reprinted in Sam Sheronick, *The Accretion of Cement and Steel Onto Prime Iowa Farmland: A Proposal For A Comprehensive State Agricultural Zoning Plan*, Note, 76 *Iowa L. Rev.* 583 (1991). (citing, Comment, *Agricultural Land Preservation: Can Pennsylvania Save the Family Farm?*, 87 *DICK. L. REV.* 595 (1983) (citing YORK COUNTY PLANNING COMMISSION, *AGRICULTURAL LAND PRESERVATION STUDY* 72 (1975))).