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Environmental Law

How We Can Grow Smarter

More Rational Land Use Planning Would Help Businesses and Communities

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Controlling sprawl, or low density, disconnected, outward development, is emerging as a hot environmental issue.

President Bill Clinton and Vice President Al Gore have put out packages of smart growth proposals. Many bills have been introduced or talked about in Congress. The Senate now has a smart growth task force with 23 members. Growth-related and open space acquisition measures were on the ballot in some 200 jurisdictions across the country in 1998, and more than two-thirds of them passed. There were 100 more in 1999, with an even higher approval rate. Major environmental organizations have added sprawl to their traditional agendas. And 39 governors mentioned the issue in their 1999 state-of-the-state addresses.

This awakened interest in land use reflects a strong public aversion to the problems sprawl brings—frustrating traffic jams and a sometimes uglier America, signifying a reduced quality of life.

There is an irony at work here. Over the past three decades, our society has enacted stringent federal controls on air, water, and waste. These controls have become as much a part of the American business scene as child labor laws or the minimum wage. While we regulate chemical pollutants down to parts per quadrillion, land use restrictions on private property have been a third rail of federal environmental policy.

Even though land use may have a more direct effect on our quality of life than some environmental regulations, we have avoided addressing it at the national level because it is hard. *Very hard.*

First, Americans have traditionally resisted federal and, to a lesser extent, state land use control because of a deeply held belief that a person's property is one's own to do with as one chooses. Indeed, the Supreme Court noted in *Nollan v. California Coastal Commission* (1987) that building on one's own property is a right, not a benefit bestowed by government.

Second, land use is inextricably intertwined with thorny social problems, such as schools, crime, and segregation, that affect private property values. Homeowners are on high alert for any proposals that threaten different uses or higher density than already exists in the neighborhood. And third, ever since New York City adopted zoning in 1916 to keep the downtown riffraff from moving up Fifth Avenue, land use control has been a jealously guarded local prerogative.

CONFLICTING PATCHWORK

Thus we have in place a patchwork of uncoordinated and sometimes conflicting regulatory schemes. Most, but by no means all, local governments have zoning. A lesser number craft comprehensive plans as well. Several states—notably Arizona, Florida, Georgia, Hawaii, Maine, Maryland, New Jersey, Oregon, Rhode Island, Utah, Vermont, and Washington—have statewide regulatory or land planning schemes, although they vary widely in the extent of oversight they apply. Traditionally, the federal government has not regulated privately owned land per se.

In fact, however, such broad environmental statutes as the Endangered Species Act, the wetlands and water runoff provisions of the Clean Water Act, and the Clean Air Act have enormous impact on what goes on the land. Although they are designed for particular purposes other than generic land use, federal environmental restrictions are often torqued to impose stringent controls at the local level. Increasingly, development is determined not by what is good land use on a comprehensive plan level, but by the breeding preferences of the gnat-catcher or the woodpecker. In short, there exists a real disconnect between local planning and federal regulation.

NEEDED REFORMS

In our recent book, *Land Use in America*, we set forth an agenda to bring some order to land use. As a start, the book urges:

- Modernizing local zoning codes to permit denser development, which would help avoid sprawl into undeveloped green fields;

- Tailoring statewide growth plans to the needs of particular situations. What makes sense for Oregon or Vermont may not for Ohio or Texas; and

- Taking a hard, realistic look at how federal regulatory and other programs affect land use, often indirectly and unintentionally.

At first blush, corporate America might be inclined to oppose any new land use initiatives. Who needs another regime of government regulation to contend with?

But today, regulators can run roughshod over constitutional rights or ignore statutory limits, because of our conflicting patchwork of land use regulations. The new concern with urban sprawl may lead to clearer rules and needed reforms that business should welcome.

Sprawl exists, of course, because most of us have benefited from it. Since the end of World War II, home ownership rates have skyrocketed (standing now at 67 percent) as Americans, especially families, supported by federally backed mortgage programs, have sought the peace, greenery, and schools of the suburbs. Inevitably, stores and businesses followed the people as we moved from tight city streets to spread-out suburban interstates. For example, the Chicago area grew geographically by 46 percent between 1970 and 1990, while its population increased only by 4 percent.

During the 1970s, women entered the 9-to-5 work force in staggering numbers, suddenly putting far more trips on our roads, and compounding the perception of sprawl because husbands and wives are usually traveling in different directions from home to jobs. Indeed, 60 percent of U.S. commuters now go from suburb to suburb. Meanwhile, the American economy has become the most powerful and most productive in history, further spurring outward development and increasing the use of our highways.

But this rapid growth has had very significant public and private costs. Sprawl has accelerated the decay of our abandoned urban cores, which in turn has exacerbated social and economic problems. Sprawl has resulted in more time spent on the road and more dollars spent for ever-expanding infrastructure. These economic considerations underlie the recent smart growth laws passed in Arizona, Georgia, Maryland, Utah, and Wisconsin.

A more rational approach to land use, replacing confusing and often contradictory regulation, would bring more pre-

dictability and fairness to the process. It would help reduce the costs of moving goods and people around our growing metropolitan regions. Developers and other business people would know early in the game what can and cannot be done, and navigating the regulatory maze should be easier.

Land use reform would also provide an opportunity to limit pollution control costs. Most of the cost effective pollution control measures at the end of the pipe or the stack are already in place. The easy quick-fix for regulators is to demand more stringent standards for these point source discharges, but the incremental costs to achieve further reductions are high. However, much of the remaining pollution comes from runoff from the land. We have been slow to address land runoff, such as from our highly productive agricultural sector, because it is much harder to quantify and regulate fairly than ratcheting down further on point sources. Sensible growth would decrease the costs of reducing pollution from these nonpoint sources.

Smart growth is not some panacea but merely an approach to better matching our land use goals and infrastructure system. If land use planning was more coordinated among local, state, and federal governments, and more rational at every level, businesses would benefit from less traffic congestion and intergovernmental conflicts, more predictable regulatory outcomes, and a fairer distribution of pollution control costs.

If local zoning provided more allowances for old-fashioned, mixed-use communities, if growing states encouraged smarter development, and if the federal government paid attention to local comprehensive plans and state economic needs, growing smarter would be economically beneficial, not burdensome.

These are big *ifs*, so business should engage in the sprawl debate and seek to shape it.

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