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Abolishing Exclusionary Zoning: A Natural Policy Alliance for Environmentalists and Affordable Housing Advocates

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ABOLISHING EXCLUSIONARY ZONING: A NATURAL POLICY ALLIANCE FOR ENVIRONMENTALISTS AND AFFORDABLE HOUSING ADVOCATES

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Abstract: Exclusionary zoning limits residential development over large areas, and even entire cities or towns, to single-family housing on large lots. Exclusionary zoning is unfair to people and families of modest means (many of whom are members of racial or ethnic minorities) because it sharply limits where they can live and thus their access to jobs, education, and a good quality of life. For these reasons, exclusionary zoning was found to violate the New Jersey Constitution in the *Mount Laurel* case. But exclusionary zoning is also an environmental problem because it is a primary ingredient of the accelerating pace of urban and suburban sprawl. As a consequence, it is a major contributor to increased air and water pollution and habitat fragmentation. The Oregon planning program demonstrates how the abolition of exclusionary zoning promotes a more equitable range of housing choice in suburbs and simultaneously reduces environmental degradation associated with low-density urbanization.

INTRODUCTION: THE ORIGINS AND PRACTICE OF CLASS SEGREGATION BY RESIDENTIAL ZONING

The zoning in the suburb of the Township of Mount Laurel, which was challenged by the South Burlington County chapter of the NAACP in May, 1971, was typical of suburban zoning then and now.[1] Most of the township's land was zoned for single-family homes on half-acre lots; apartments, duplexes, and mobile homes were prohib-

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[1] "Overall, the zoning pattern of Mount Laurel [was] neither more nor less exclusionary than that of most suburban communities . . . ." 2 ANDERSON'S AMERICAN LAW OF ZONING § 8.18, at 52 (Kenneth H. Young ed., 4th ed. 1996).

ited.[2] This kind of zoning practiced city-wide is known as "exclusionary zoning."[3]

In the first two decades of the twentieth century, city zoning was used to separate incompatible uses—noisy and polluting industrial and commercial uses were to be kept out of residential areas.[4] But from the beginning, many city planners treated apartments and other kinds of multifamily housing as equally noxious, a threat to property values and the public welfare.[5]

State supreme court decisions upholding exclusionary zoning featured paeans to the superiority of single-family detached houses as the best way to advance civic virtue and public health.[6] In many cases, this zoning had explicitly racist origins.[7]

Only rarely did courts acknowledge the class- and race-based animus underlying residential zoning, and question its constitutionality:

> And no gift of second sight is required to foresee that if this Kentucky [racial zoning] statute had been sustained [by the Supreme Court in *Buchanan v. Warley*], its provisions would have spread from city to city throughout the length and breadth of the land. And it is equally apparent that the next step in the exercise of this police power would be to apply similar restrictions for the purpose of segregating in like manner various groups of newly arrived immigrants. The blighting of property values and the congesting of population, whenever the colored races or certain foreign races invade a residential section, are so well known as to be within judicial cognizance.
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[2] S. Burlington NAACP v. Township of Mount Laurel, 336 A.2d 713, 719 (N.J. 1975).

[3] *See* 2 ANDERSON'S AMERICAN LAW OF ZONING, *supra* note 1, § 8.02, at 8–9.

[4] *See, e.g.*, Kroner v. City of Portland, 240 P. 536, 538 (Or. 1925) (prohibition of dairy products store in a residential zone constitutional); State *ex rel.* Carter v. Harper, 196 N.W. 451, 452 (Wis. 1923) (upholding prohibition of a dairy and pasteurizing plant in a residential area).

[5] Arthur C. Comey, *Residential Zoning: Introductory Statement, in* PROCEEDINGS OF THE ELEVENTH CONGRESS ON CITY PLANNING, NIAGARA FALLS AND BUFFALO, N.Y.: MAY 26–28, 1919, at 159, 160 (1920).

[6] Miller v. Bd. of Pub. Works, 234 P. 381, 387 (Cal. 1925); Brett v. Bldg. Comm'r, 145 N.E. 269, 271 (Mass. 1924).

[7] *See* Christopher Silver, *The Racial Origins of Zoning in American Cities, in* URBAN PLANNING AND THE AFRICAN AMERICAN COMMUNITY: IN THE SHADOWS 25 (June Manning Thomas & Marsha Ritzdorf eds., 1997).

> . . . The purpose to be accomplished is really to regulate the mode of living of persons who may hereafter inhabit it. In the last analysis, the result to be accomplished is to classify the population and segregate them according to their income or situation in life.[8]

The decision of the district court in *Ambler Realty Co. v. Village of Euclid* was overturned by the Supreme Court in 1926 in the decision confirming the constitutionality of municipal zoning.[9] Unlike the district court, the Supreme Court shared the prevailing view of apartments as a kind of spreading blight on the public good and property values.[10] In addition, the segregation of Americans by class and race fostered by exclusionary zoning was powerfully reinforced by the 1938 Federal Mortgage Insurance Underwriting Manual[11] and other public and private guidance.[12]

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[8] Ambler Realty Co. v. Vill. of Euclid, 297 F. 307, 313, 316 (N.D. Ohio 1924), *rev'd* 272 U.S. 365 (1926).

[9] 272 U.S. 365, 394 (1926).

[10] *Id.* The Court stated:

> With particular reference to apartment houses [namely residential neighborhoods made up of single family homes on their own lots], it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others . . . .

Id.

[11] FED. HOUS. ADMIN., UNDERWRITING MANUAL: UNDERWRITING AND VALUATION PROCEDURE UNDER TITLE II OF THE NATIONAL HOUSING ACT §§ 935, 937 (1938). The manual reads:

> [Section] 935 . . . Natural or artificially established barriers will prove effective in protecting a neighborhood and the locations within it from adverse influences . . . [including] prevention of the infiltration of business and industrial uses, lower class occupancy, and inharmonious racial groups . . .
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> [Section] 937. Quality of Neighboring Development . . . Areas surrounding a location are investigated to determine whether incompatible racial and social groups are present, for the purpose of making a prediction regarding the probability of the location being invaded by such groups. If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes.

Id.

[12] *See* FED. HOUS. ADMIN., LAND PLANNING BULLETIN NO. 1, SUCCESSFUL SUBDIVISIONS: PRINCIPLES OF PLANNING FOR ECONOMY AND PROTECTION AGAINST NEIGHBORHOOD

In the 1960s and 1970s, the impacts of class-based low-density suburban zoning on access of lower-income Americans to affordable housing, jobs, and schools became the focus of judicial review at the federal and state level.[13]

Those cases show the continued growth in residential minimum lot sizes that allowed segregation of the highest income suburbs.[14] Examples include: one-acre minimum lot size in *Bilbar Construction Co. v. Board of Adjustment*[15] and *Agins v. City of Tiburon*;[16] three-acre minimum lot size in *Appeal of Kit-Mar Builders, Inc.*;[17] four-acre minimum lot size in *National Land & Investment Co. v. Kohn*;[18] five-acre minimum lot size in *Robert E. Kurzius Inc. v. Incorporated Village of Upper Brooksville*;[19] and ten-acre minimum lot size in *In re Application of Wetherill*.[20]

And the lot size minimums continue to grow, with ten-, twenty-, and even forty-acre lots in new ranchette subdivisions around the country.[21] If these trends continue, then an increasing share of our urban regions will be off limits to Americans who cannot afford a big house on a big lot.

In addition to judicial review, the social and political effects of exclusionary zoning have also been the subject of scholarly and politi-

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BLIGHT 5, 7, 9 (n.d.); Conclusions of Community Builders' Council, Columbus, Ohio, 14 (June 6, 1944) (manuscript, on file with Harvard University Loeb Design Library).

[13] 2 ANDERSON'S AMERICAN LAW OF ZONING, *supra* note 1, § 8.18, at 50–51.

[14] By contrast, the sizes of lots in the most celebrated large-scale, postwar suburban development, Levittown, were only 6000 square feet (less than one-third the size of the one-half acre lots in Mount Laurel) and the houses were 750 or 800 square feet. LYNNE MATARRESE, THE HISTORY OF LEVITTOWN NEW YORK 45 (1997).

[15] 141 A.2d 851, 853 (Pa. 1958).

[16] 447 U.S. 255, 262 (1980).

[17] 268 A.2d 765, 765–66 (Pa. 1970).

[18] 215 A.2d 597, 600 (Pa. 1965).

[19] 414 N.E.2d 680, 681 (N.Y. 1980).

[20] 406 A.2d 827, 828 (Pa. 1979).

[21] *See, e.g.*, Environmental Assessment Worksheets, EQB MONITOR (Minn. Envtl. Quality Bd., St. Paul, Minn.), Dec. 27, 1999, at 1 (noting that Grey Fox Estates, a subdivision south of Minneapolis, has lots of five to twenty acres), http://www.mnplan.state.mn.us/pdf/1999/eqb/monitor/12-27-99.pdf (last visited Mar. 16, 2003); YELLOWSTONE CREEK RANCH ("Yellowstone Creek Ranch, located in beautiful Southern Colorado, is subdivided into 40-acre parcels ranging from level/fertile horse property at 7,800 feet in elevation to alpine meadows with trees at 9,400 feet."), *at* http://www.jpking.com/auction_detail.php?auction_id=17301 (last visited Apr. 14, 2003); WAIKI'I RANCH HOMEOWNERS ASSOCIATION ABOUT PAGE ("Waiki'i Ranch is located in the middle of Parker Ranch country between 3,500 and 5,000 feet elevation. It is 13 miles from the town of Kamuela, and is nestled on the western slopes of Mauna Kea, a 13,800-foot high extinct volcano. The Ranch is over 2,000 acres in size, and consists of 10, 20, and 40-acre residential lots."), *at* http://www.waikiiranchhoa.com/about.htm (last visited Apr. 4, 2003).

cal debate.[22] Only recently, however, have the impacts of exclusionary zoning on the environment been examined.

I. The Environmental Impacts of Low-Density, Class-Based Exclusionary Zoning

Suburban zoning, founded on class-based, low-density zoning, has resulted in a massive expansion of America's urban areas.[23] As the following table shows, the rate of expansion far exceeds the rate of population growth.

Changes in Population and Land Area for Select U.S. Metropolitan Areas 1950–90[24]

Urbanized Area	Population Growth	Urbanized Area Growth	Ratio of Area Growth to Population Growth
Pittsburgh	9.5%	206.3%	21.72
Buffalo	6.0%	132.5%	20.08
Boston	24.3%	158.3%	6.51
Philadelphia	44.5%	273.1%	6.14
St. Louis	39.0%	219.0%	5.62
New York	30.5%	136.8%	4.49
Chicago	38.0%	123.9%	3.99
Minn./St. Paul	110.7%	360.2%	3.25
Atlanta	325.4%	972.6%	2.99
Washington	161.3%	430.9%	2.67

Rapid expansion of an urbanized area can occur even in regions with no population growth or even *declining* population growth.[25] For example, between 1982 and 1996, the urban region of Detroit, Michigan experienced a 1.1% decline in population even as its urbanized area grew by 19.6%.[26] During the same period the Buffalo-Niagara urban area's population was unchanged, but its urbanized area grew by 52%.[27]

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[22] *See generally, e.g.*, Myron Orfield, American Metropolitics: The New Suburban Reality (2002).

[23] Dev., Cmty., & Envtl. Div., U.S. Envtl. Prot. Agency, EPA 231-R-01-002, Our Built and Natural Environments: A Technical Review of the Interactions Between Land Use, Transportation, and Environmental Quality: Technical bulletin 4 (2001) [hereinafter Built and Natural Environments], *available at* http://www.epa.gov/smartgrowth/pdf/built.pdf (last visited Apr. 4, 2003).

[24] *Id.* at 6 tbl.2-2.

[25] *Id.* at 7 tbl.2-3.

[26] *Id.*

[27] *Id.*

If the ratio between population growth and the urbanization of land established between 1982 and 1997 continues into the future, then between 2000 and 2025 the United States will urbanize almost as much land in those twenty-five years as it did in the first 200 years of the nation's existence—an area the size of Wyoming.[28] This urbanization occurs at the expense of other land uses and resources.

Between 1982 and 1997, an estimated 10.3 million acres of forestland and 3.3 million acres of rangeland were developed, along with 11.3 million acres of crop and pasture land.[29] In recent years the biggest cause of the destruction of wetlands has shifted from agriculture to development, which accounts for just over half of all wetland losses.[30]

Low-density residential development is associated with a rapidly expanding road network needed to serve dispersed housing.[31] The hard surfaces of the road accelerate the speed of rainwater runoff, increase the temperature of the water, and carry a spectrum of dangerous automobile-related pollutants into streams and coastal waters.[32] For example, research on development in the Tuckahoe Creek watershed in Virginia quantified the impact of the construction of about 20,000 large-lot home sites between 1958 and 1990, which were served by forty-two new stream crossings and a 155% increase in im-

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[28] *See* DANA BEACH, PEW OCEANS COMM'N, COASTAL SPRAWL: THE EFFECTS OF URBAN DESIGN ON AQUATIC ECOSYSTEMS IN THE UNITED STATES 4 (2002).

[29] *See* IOWA STATE UNIV. STATISTICAL LAB., U.S. DEP'T OF AGRIC., SUMMARY REPORT: 1997 NATIONAL RESOURCES INVENTORY 36 tbl.5 (2000).

[30] *See* FOREST SERV., U.S. DEP'T OF AGRIC., 2000 RPA ASSESSMENT OF FOREST LAND AND RANGE LANDS 18 (2001) [hereinafter 2000 RPA ASSESSMENT], *available at* http://www.fs.fed.us/pl/rpa/rpaasses.pdf (last visited Apr. 4, 2003) (containing other useful references to the impacts of urban and low-density development).

[31] *See* BUILT AND NATURAL ENVIRONMENTS, *supra* note 23, at i–iii.

[32] *See* OFFICE OF WATER, U.S. ENVTL. PROT. AGENCY, URBANIZATION AND STREAMS: STUDIES OF HYDROLOGIC IMPACTS (1998), *available at* http://www.epa.gov/OWOW/NPS/urbanize/report.html (last visited Apr. 4, 2003); *see also* BEACH, *supra* note 28, at 7–12 (citing D.F. BOESCH ET AL., PEW OCEANS COMM'N, MARINE POLLUTION IN THE UNITED STATES: SIGNIFICANT ACCOMPLISHMENTS, FUTURE CHALLENGES (2001); D. Booth & L. Reinelt, *Consequences of Urbanization on Aquatic Systems: Measured Effects, Degradation Thresholds, and Corrective Strategies*, *in* PROCEEDINGS OF WATERSHED '93: A NATIONAL CONFERENCE ON WATERSHED MANAGEMENT (1993); D. Booth, *Urbanization and the Natural Drainage System—Impacts, Solutions, and Prognoses*, 7 N.W. ENVTL. J. 93–118 (1991); R. Smith et al., *Stream Water Quality in the Conterminous United States—Status and Trends of Selected Indicators During the 1980's*, *in* U.S. GEOLOGICAL SURVEY, NATIONAL WATER SUMMARY 1990–1991: STREAM WATER QUALITY, Water-Supply Paper 2400 (1992)).

pervious surfaces.[33] During the same period, six species of indigenous fish became extinct, there was an 80% decline in the population of remaining indigenous fish species, and there was a significant decline in species diversity.[34]

Roads fragment ecosystems, which adversely affects wildlife.[35] Low-density residential development patterns also fragment big game habitat. Each new house may have a negligible impact, but the cumulative effects can be significant.[36] Because a disproportionate share of recent and future population growth will be in coastal regions, and because suburban development patterns magnify the impacts of this growth, suburban development will have far-reaching impacts on marine and estuarine natural resources.[37]

Falling population densities attributable to large-lot suburban zoning are linked to a significant increase in per capita driving.[38] In the last half of the twentieth century, the population of cars and trucks in the nation more than quadrupled, while the human population has not even doubled.[39] The average amount of driving per American more than doubled in twenty-five years, from 4587 miles per year in 1970 to 9567 miles per year in 1995.[40] As a result, the total amount of driving is overwhelming the benefits of pollution control emission technology.[41]

Residential density plays an important role in determining how much driving is required; lower residential population densities (as well as the separation and dispersal of commercial and other uses) are an important factor in increased air pollution from cars and trucks.[42] An illustration of the relationship between development density and

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[33] Alan L. Weaver & Greg C. Garman, *Urbanization of a Watershed and Historical Changes in a Stream of Fish Assemblage*, 123 TRANSACTIONS OF THE AM. FISHERIES SOC'Y 162, 162–72 (1994), *noted in* BUILT AND NATURAL ENVIRONMENTS, *supra* note 23, at 13.

[34] *See id.*, *noted in* BUILT AND NATURAL ENVIRONMENTS, *supra* note 23, at 13

[35] *See* BUILT AND NATURAL ENVIRONMENTS, *supra* note 23, at 13–14.

[36] *See* David M. Theobald et al., *Estimating the Cumulative Effects of Development on Wildlife Habitat*, 39 LANDSCAPE & URB. PLAN. 25, 25–26 (1997); *see also* 2000 RPA ASSESSMENT, *supra* note 30.

[37] *See* BEACH, *supra* note 28, at 4–5.

[38] *See* BUILT AND NATURAL ENVIRONMENTS, *supra* note 23, at 10; OFFICE OF TRANSP. & AIR QUALITY, U.S. ENVTL. PROT. AGENCY, EPA 420-R-01-001, EPA GUIDANCE: IMPROVING AIR QUALITY THROUGH LAND USE ACTIVITIES 15 (2001).

[39] OFFICE OF TRANSP. & AIR QUALITY, *supra* note 38, at 10.

[40] *Id.*

[41] *See id.* at 10 fig.1.

[42] *See id.* at 15 (citing APOGEE/HAGLER BAILLY, U.S. ENVTL. PROT. AGENCY, THE EFFECTS OF URBAN FORM ON TRAVEL AND EMISSIONS: A REVIEW AND SYNTHESIS OF THE LITERATURE (1998)).

driving is provided by western New York, where population decreased, but the total amount of driving increased.[43] High capacity transit, which performs best in association with moderate densities within walking distance to stations, is not feasible in low-density residential suburbs.[44]

Sophisticated computer models that relate land uses, residential densities, and air pollution can quantify these relationships.[45] For example, Metro, the regional government in the Portland, Oregon metropolitan area[46] analyzed several different regional development patterns for the Oregon portion of the metropolitan region.[47] Alternative A, a lower density alternative, would have a gross residential density of 9.8 people per acre, 26% of its housing in multifamily types, and 57% of its land zoned for single-family residential use.[48] Alternative B, a higher density alternative, would have a gross density of 12.4 people per acre, 40% of its housing in multifamily housing types, and 46.5% of its land in single-family residential zoning.[49]

Alternative B, the higher density alternative, was projected to produce about 29,000 kilograms less of carbon monoxide and about 7000 kilograms less of nitrous oxides each summer day than Alternative A.[50] This reduced air pollution would, at least in part, be a reflection of a lower amount of driving per capita under Alternative B

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[43] "By 1999 Western New Yorkers were driving approximately 23 million miles per year in their cars, trucks, and vans—an increase of some two million miles per year since 1997. The declining regional population throws this increase into still sharper relief: with fewer people in the region, Western New Yorkers are nonetheless logging more total miles on the road." INST. FOR LOCAL GOVERNANCE & REG'L GROWTH, STATE UNIV. OF N.Y. AT BUFFALO, STATE OF THE REGION REPORT, PROGRESS REPORT 2000 FOR THE BUFFALO-NIAGARA REGION, (2001), *available at* http://regional-institute.buffalo.edu/sotr/repo/repo00/02_envi/02_8.html (last visited Apr. 4, 2003).

[44] DOUGLAS C. PORTER, TRANSP. RESEARCH BD., FED. TRANSIT ADMIN., SYNTHESIS OF TRANSIT PRACTICE 20, TRANSIT-FOCUSED DEVELOPMENT 4 (1997); ROBERT CERVERO & KARA KOCKELMAN, INST. OF URBAN & REG'L DEV., TRAVEL DEMAND AND THE THREE DS: DENSITY, DIVERSITY, AND DESIGN 2 (1996); BORIS S. PUSHKAREV & JEFFREY M. ZUPAN, PUBLIC TRANSPORTATION AND LAND USE POLICY 29–35 (1977); John Pucher, *Urban Travel Behavior as the Outcome of Public Policy: The Example of Modal-Split in Western Europe and North America*, 54 J. AM. PLAN. ASS'N 509, 518 (1988).

[45] *See, e.g.*, METRO, CONCEPTS FOR GROWTH: REPORT TO COUNCIL 78–88 (1994) (employing such a computer model).

[46] *See infra* notes 86–92 and accompanying text.

[47] *See* METRO, *supra* note 45.

[48] *Id.* at 99 fig.11.8.

[49] *Id.*

[50] *See id.*

(10.86 miles per day compared with 12.48 miles in Alternative A) and 50% higher transit use (although still at a modest level).[51]

Suburban zoning causes these environmental effects, as well as many others.[52] Although not all of the environmental impacts of low-density, suburban-style urban development are caused by class-based exclusionary zoning, given the large share of urbanization devoted to single-family residential uses,[53] large-lot suburban zoning may be the single biggest contributing cause of these impacts.

Conversely, efforts that reduce regulatory barriers to higher-density urban residential development will allow for both an increase in lower-cost housing types[54] and a decrease in environmental impacts.

II. Oregon's Planning Program Abolishes Citywide Exclusionary Zoning

In 1973, the State of Oregon adopted a statewide land use planning program that addressed a wide variety of topics, but one of its greatest achievements remains largely unknown: its sweeping reform of the practice of low-density, class-based exclusionary zoning.[55]

Republican Governor Tom McCall teamed up with Republican State Senator Hector Macpherson and Democratic State Senator Ted Hallock, to win passage of Senate Bill 100, a comprehensive land use planning statute.[56]

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[51] *Id.* at 88 fig.11.8.

[52] *See generally id.* (providing a chart listing these environmental impacts).

[53] *See, e.g., supra* notes 50–51 and accompanying text for land consumption figures.

[54] Obviously not all higher density urban housing is lower cost, as the buyers and owners of various high rise luxury condominiums can attest. But given the cost of urban land, almost all lower cost residential development in cities is and will be higher density.

[55] *See generally* Comprehensive Planning Responsibilities, Or. Rev. Stat. § 197.175 (2001).

[56] *Id.* §§ 197.175–.200. *See* Robert L. Liberty, *Oregon's Comprehensive Growth Management Program: An Implementation Review and Lessons for Other States*, [1992 News & Analysis] 22 Envtl. L. Rep. (Envtl. L. Inst.) 10,367 (June 1992) (providing a more detailed description of the legislation, its implementation, and the measurable results fifteen years after the Goals went into effect); *see also* John M. DeGrove, Land Growth & Politics 235–90 (1984) (giving a narrative history of the adoption of the legislation as well as its structure and early administration); Audio tape: The Battle to Keep Oregon Lovable and Livable, held by 1000 Friends of Oregon (June, 2000) (on file with 1000 Friends of Oregon) (giving the history of the passage and implementation of Senate Bill 100.). *See generally* James H. Wickersham, *The Quiet Revolution Continues: The Emerging New Model for State Growth Management Statutes*, in *1995 Zoning and Planning Law Handbook* § 13.01 (Alan M. Forrest ed., 1995) (providing a very useful update on more recent efforts by states to manage growth in ways that reduce sprawl).

Although Senate Bill 100 had many components, its most important feature was the establishment of mandatory state land use planning policies (Goals), which all local governments[57] were required to implement through binding, not advisory, comprehensive land use plans.[58] Those city and county plans were subsequently executed by local zoning and other land use regulations.[59] The task of adopting the Goals,[60] as well as reviewing city and county land use plans and implementing ordinances to determine if they complied with the Goals, was given to a new state board composed of volunteers appointed by the governor, the Land Conservation and Development Commission (LCDC),[61] and aided by its staff in the Department of Land Conservation and Development.[62]

Overall, Oregon's Goals reflect a mixture of development and conservation objectives, from preserving natural resources and farmland to promoting economic diversification and the orderly provision of public facilities and services.[63] Probably the best-known element of the Oregon planning program is Goal 14, "Urbanization," which requires that every city, regardless of size, have an urban growth boundary.[64] Urban uses are to be developed inside the boundary land; urban development is prohibited outside the urban growth boundary,[65] even on land neither suitable nor zoned for farming, ranching, or forestry.[66]

From the beginning, housing affordability was destined to be one of the State's more important Goals, reflecting in part the important role played by home builder associations in state politics, including a role in the drafting of Senate Bill 100.[67]

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[57] In Oregon, there are only three types of local governments—cities, counties, and metropolitan service districts. *See* OR. REV. STAT. §§ 201.005–.370, 203.010–.810, 221.005–.128, 268.010–.990.

[58] *Id.* §§ 197.175(2), 197.250.

[59] *Id.* § 197.175(1).

[60] *See* OR. ADMIN. R. 660-015-0000(1) to (19) (2003) (showing effective dates), *available at* http://www.lcd.state.or.us/goalhtml/goals.html (last visited Apr. 4, 2003).

[61] OR. REV. STAT. § 197.030.

[62] *Id.* §§ 197.075–.090.

[63] OR. ADMIN. R. 660-015-0000(1) to (19).

[64] OR. ADMIN. R. 660-015-0000(14).

[65] *Id.*

[66] 1000 Friends of Or. v. LCDC (Curry County), 724 P.2d 268, 294–95 (Or. 1986).

[67] DeGrove, *supra* note 56, at 242, 244.

The objective of Goal 10, "Housing," is to "provide for the housing needs of citizens of the state."[68] Local governments' land use plans must "encourage the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location type and density."[69] The "planning guidelines" for Goal 10 require that:

> In addition to inventories of buildable lands, housing elements of a comprehensive plan should, at a minimum, include: (1) a comparison of the distribution of the existing population by income with the distribution of available housing units by cost; (2) a determination of vacancy rates, both overall and at varying rent ranges and cost levels; (3) a determination of expected housing demand at varying rent ranges and cost levels; (4) allowance for a variety of densities and types of residences in each community; and (5) an inventory of sound housing in urban areas including units capable of being rehabilitated.[70]

Although this directive sounds admirable, most practitioners understand the gap between practice and theory is greater in practice than in theory. Whether Goal 10 would successfully reform exclusionary zoning would not be known until LCDC tried to apply it to the review of land use plans and regulations being prepared by Oregon's cities and counties.

In 1977, the City of Durham, a small, prosperous white suburb of Portland, adopted an ordinance that reduced the allowable density in its A-1 residential zone from ten to five units per acre, increasing the minimum lot size from roughly 4000 to 8000 square feet.[71] Using the

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[68] OR. ADMIN. R. 660-015-0000(10). But, the reader needs to keep in mind that needed housing is to be built inside urban growth boundaries. OR. ADMIN. R. 660-015-0000(14). Housing is not to be built in the farm and forest zones, which have been set aside for farming, ranching, and timber production. OR. REV. STAT. § 215.243 (2001). In those zones, which apply to more than 90% of the private land in the state, minimum parcel (or acreage) sizes are 80, 160, or 240 acres. *Id.* §§ 215.740, 215.780. Houses are not allowed as of right on those parcels. *Id.* §§ 215.262(1), 215.213(3), 215.284(1)–(4), (7). For the justifications for strict limits on houses and large minimum parcel sizes in farm and forest zones, see Liberty, *supra* note 56, at 10,381–83, 10,385.

[69] Liberty, *supra* note 56, at 10,378.

[70] OR. ADMIN. R. 660-015-0000(10).

[71] Seaman v. City of Durham, 1 LCDC 283, 288 (1978).

appeal provisions in effect at the time, nineteen property owners appealed the City of Durham's amendment to LCDC.[72]

In its decision, LCDC explained the anti-exclusionary intent of Goal 10, citing *Southern Burlington County NAACP v. Township of Mount Laurel*,[73] as well as various treatises and publications:

> The housing goal clearly says that municipalities are not going to be able to do what they have done in metropolitan areas in the rest of the country. They are not going to be able to pass the housing buck to their neighbors on the assumption that some other community will open wide its doors and take in the teachers, police, firemen, clerks, secretaries, and other ordinary folk who can't afford homes in the towns where they work.[74]

LCDC reviewed the record regarding the type and acreage of zoning for lower- and middle-income apartments in its analysis of the ordinance on appeal. Its findings and order did not mince words:

> Nothing in the record suggests that Durham, in amending its plan, gave any consideration to low-cost housing needs of its own residents and workers, much less those of the region. The record clearly shows a contrary intent, namely to decrease the diversity of housing types and prices. Such planning runs directly contrary to the purposes of Goal 10.
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> The real spirit and intent of Ordinance 61-77 is, in the Commission's opinion, embodied in the remarks of its principal proponent, Planning Director John E. Sattler, also a member of the City Council. He stated that one of the main purposes of the change was to discourage "transient" types
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[72] *Id.* Under the appeal provisions in effect at that time, former Oregon Revised Statute 197.300(1)(d), the city's amendment of its zoning ordinance could be appealed to the Land Conservation and Development Commission. *Id.* The 1979 Legislature created a separate review tribunal, the Land Use Board of Appeals, which today hears all appeals from local government and special service district land use decisions. *Id.* §§ 197.810–.845 (2001). For an overview of the Board's jurisdiction, standards of review, and docket characteristics see Liberty, *supra* note 56, at 10,373–74.

[73] 336 A.2d 713 (N.J. 1975).

[74] *Seaman*, 1 LCDC at 289.

> . . . The Commission finds that the Durham City Ordinance 61-77 violates Goal 10 for the reasons set forth herein. The ordinance is therefore invalid.[75]

By 1981, LCDC's quasi-judicial decisions and its staff's established practice in reviewing local plans and regulations[76] had been codified into two administrative rules laying out the meaning of Goal 10 and the methods for achieving compliance with the Goal—one rule, which applies statewide,[77] and another rule, called the Metropolitan Housing Rule, which applies only to the Portland region.[78] The Metropolitan Housing Rule required nineteen of the twenty-four cities, as well as the unincorporated parts of the three counties inside the metropolitan urban growth boundary, to meet combined density targets (namely densities resulting from averaging single-family and multifamily housing) for new construction of six, eight, or ten units per acre.[79] The five cities not required to meet a target density for new residential development were exempted because they had populations of less than 2500.[80]

Shortly thereafter, LCDC's Goal 10 and the related administrative rules became the basis for statutes adopted by the Oregon legislature. Like Goal 10 and the statewide Goal 10 Administrative Rule, the statutes mandate planning and zoning for multifamily housing, farmworker housing, and manufactured housing.[81] The statutes specifically disallow using home rule charters as the basis for excluding multifamily, rental, manufactured, or government-assisted housing from all of a

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[75] *Id.* at 290, 293. Goal 10 was not considered in isolation. Other cases explored the link between ensuring affordable housing under Goal 10 and limiting urbanization through urban growth boundaries under Goal 14, which specifies that the "need for housing, employment opportunities and livability" are factors that must be considered in drawing and amending urban growth boundaries. OR. ADMIN. R. 660-015-0000(14) (2003); *see also* 1000 Friends of Or. v. City of Lake Oswego, 2 LCDC 138, 151 (1981).

[76] That review included: (1) an analysis of the need for lower-cost housing within the city and the region; (2) an inventory of the types, amount, and suitability for development of the land the city proposed to be zoned for lower-cost housing; and (3) a scrutiny of the standards applied to applications to develop, or rezone in order to develop, lower-cost housing. The standards were reviewed to make sure they were clear and objective, so that they could not be used to block affordable housing. *See generally* LAND CONSERVATION & DEV. COMM'N, ACKNOWLEDGEMENT OF COMPLIANCE, CITY OF ST. HELENS 25–39, 55 (1981); LAND CONSERVATION & DEV. COMM'N, ACKNOWLEDGEMENT OF COMPLIANCE, CITY OF HAPPY VALLEY 23–43, 54 (1981).

[77] OR. ADMIN. R. 660-008-0000 to -0040.

[78] OR. ADMIN. R. 660-007-0000 to -0060.

[79] OR. ADMIN. R. 660-007-0035.

[80] OR. REV. STAT. § 197.303(2)(a) (2001); OR. ADMIN. R. 660-007-0005.

[81] *See* OR. REV. STAT. §§ 197.303, 197.307, 197.312.

city's residential zones,[82] and gave special attention to both manufactured[83] and farmworker housing.[84]

Implementing Goal 10 to break city-wide exclusionary zoning and the other goals was controversial, but LCDC was given, and used, the power to enforce compliance.[85]

In the 1990s, LCDC's efforts to reform exclusionary zoning at the state level were supplemented in the Oregon part of the Portland metropolitan region by Metro, the regional government.[86] Metro is governed by an elected council and president[87] and has been given broad authority over regional land use planning by the legislature[88] (including the power to require local governments to amend their

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[82] *Id.* § 197.312(1), (2).

[83] *Id.* § 197.314(1). The statute reads:

> [W]ithin urban growth boundaries each city and county shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses to allow for siting of manufactured homes as defined in ORS 446.003 (26)(a)(C). A local government may only subject the siting of a manufactured home allowed under this section to regulation as set forth in ORS 197.307 (5).

Id.

[84] *Id.* § 197.312(2) ("A city or county may not impose any approval standards, special conditions or procedures on farm worker housing that are not clear and objective or have the effect . . . of discouraging farm worker housing . . . .").

[85] *Id.* § 197.320; City of Happy Valley v. Land Conservation & Dev. Comm'n, 677 P.2d 43, 46 (Or. Ct. App. 1984).

[86] Metro, Or., Charter Preamble (1992) [hereinafter Metro Charter], *available at* http://www.metro-region.org/article.cfm?articleid=629 (last visited Apr. 4, 2003). The Metro Charter's Preamble reads:

> We, the people of the Portland area metropolitan service district, in order to establish an elected, visible and accountable regional government that is responsive to the citizens of the region and works cooperatively with our local governments; that undertakes, as its most important service, planning and policy making to preserve and enhance the quality of life and the environment for ourselves and future generations; . . . do ordain this charter for the Portland area metropolitan service district, to be known as Metro.

Id. The Charter was adopted as provided in the Oregon Constitution Article XI, Section 14, providing that "[t]he Legislative Assembly shall provide by law a method whereby the legal electors of any metropolitan service district . . . may adopt . . . a district charter." OR. CONST. art XI, § 14. Oregon Revised Statutes chapter 268 provides for and describes the role and powers of "metropolitan service districts" generally; the Portland region is the only part of the state to have implemented these provisions. *See* METRO, OR., ABOUT THE CHARTER (2000) ("Metro is the only regional government in the United States with a home rule charter . . . ."), *available at* http://www.metro-region.org/article.cfm?ArticleID=211 (last visited Apr. 4, 2003).

[87] Metro Charter, *supra* note 86, § 16(1)–(2).

[88] *See* OR. REV. STAT. §§ 268.380, 268.390.

plans and regulations to adhere to Metro's own planning mandates[89]) and through its voter-approved home rule charter.[90]

Metro's regional framework plan and urban growth management functional plan establish a wide array of housing objectives (including fair-share housing targets for each local government[91]) backed up by mandated changes to local plans and zoning.[92]

III. The Results of Oregon's Antiexclusionary Zoning Policy

A. *The Increased Supply of Affordable Housing and Less Urban Sprawl*

The implementation of Goal 10 was quickly translated into a fundamental change in residential zoning in the Portland metropolitan region. Between 1978, when the draft regional urban growth boundary was first drawn, and 1982, when Goal 10 had been largely implemented, the total amount of residentially-zoned land had in-

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[89] *Id.* §§ 268.380(1)(b), 268.390(5)(a)–(d).

[90] Metro Charter, *supra* note 86, § 5, ¶ 2(b), (c), (e).

[91] *See* Metro, Regional Framework Plan, ch. 1, § 1.3 (1997), *available at* http://www.metro-region.org/library_docs/land_use/frame.pdf (last visited Apr. 4, 2003). This plan states that:

> The Metro Council shall adopt a "fair share" strategy for meeting the housing needs of the urban population in cities and counties based on a subregional analysis that provides for:
> • a diverse range of housing types available within cities and counties inside the UGB;
> • specific goals for low- and moderate-income and market rate housing to ensure that sufficient and affordable housing is available to households of all income levels that live or have a member working in each jurisdiction;
> • housing densities and costs supportive of adopted public policy for the development of the regional transportation system and designated centers and corridors;
> • a balance of jobs and housing within the region and subregions.

Id.

[92] *Id.* ch. 1, § 1.3.4–.5 (1997), *available at* http://www.metro-region.org/library_docs/land_use/frame.pdf (last visited Apr. 4, 2003). These mandated changes demand adherence to certain regionwide affordable housing policies, including: (1) minimum densities shall be required in all residential zones; (2) at least one accessory unit shall be allowed within any detached single family dwelling; (3) in order to implement 2040 Growth concept, densities shall be increased in rail station areas; and (4) a performance standard requiring a density bonus shall be adopted. *Id.* § 1.3.4.1–.4. In addition, these changes demand that an Affordable Housing Functional Plan be developed containing requirements that cities and counties adopt numerical "fair share" targets. *Id.* § 1.3.4.5. These targets have been articulated in table form, assigning numbers of units needed for each of the twenty-four cities, and parts of three counties. Metro, Code, Tit. III, ch. 3.07, tbl.3.07-1 (2001), *available at* http://www.metro-region.org/library_docs/about/chap307.pdf (last visited Apr. 3, 2003).

creased by 10%.[93] However, the maximum number of dwellings that could be built under the revised zoning increased from 129,000 to over 301,000 units.[94]

The minimum lot size in single-family residential zones was reduced from 12,800 square feet—slightly more than one-quarter of an acre—to 8280 square feet.[95] This translated into a land cost savings of $7000 for the average-sized single-family house lot in 1982 dollars.[96] The amount of land zoned multifamily more than tripled from 8% to 27% of net buildable acreage.[97]

LCDC insisted on maximum densities in excess of the target densities required by the Metropolitan Housing Rule,[98] because it anticipated that site conditions and neighborhood resistance would result in projects built below maximum densities. A decade after LCDC began implementing Goal 10, Portland-area homebuilders collaborated with 1000 Friends of Oregon to research whether the regional density targets were being met.[99]

The research found that the six cities and part of one county assigned a target density of ten units per net buildable acre for new residential development achieved an actual built density of 9.58 units per acre (81% of the maximum allowable density), whereas the six cities and parts of two counties assigned a target density of eight units per acre exceeded the goal, reaching a net density of 8.42 units per acre.[100] The only small city in the study that had been assigned a target density of six units per net buildable acre fell far short, achieving only 3.09 units per acre.[101]

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[93] Liberty, *supra* note 56, at 10,367, 10,379 (citing MARK GREENFIELD, 1000 FRIENDS OF OR., THE IMPACT OF OREGON'S LAND USE PLANNING PROGRAM ON HOUSING OPPORTUNITIES IN THE PORTLAND METROPOLITAN REGION 4, 6–7 (1982)).

[94] *Id.* (citing GREENFIELD, *supra* note 93, at 7).

[95] *Id.* (citing GREENFIELD, *supra* note 93, at 17–18).

[96] *Id.* (citing GREENFIELD, *supra* note 93, at 23).

[97] *Id.* (citing GREENFIELD, *supra* note 93, at 6–7).

[98] 1000 Friends of Or. v. City of Lake Oswego, 2 LCDC 138, 149 (1981).

[99] Liberty, *supra* note 56, at 10,379 (citing 1000 FRIENDS OF OR. & THE HOME BUILDERS ASS'N OF METRO PORTLAND, MANAGING GROWTH TO PROMOTE AFFORDABLE HOUSING: REVISITING OREGON'S GOAL 10—TECHNICAL REPORT 30, 32 (1991) [hereinafter REVISITING OREGON'S GOAL 10]).

[100] *Id.* (citing REVISITING OREGON'S GOAL 10, *supra* note 99, at app. F-1, tbl.3).

[101] *Id.* (citing REVISITING OREGON'S GOAL 10, *supra* note 99, at 32).

The size of lots for single-family homes has fallen again in recent years; the median lot size for a new single-family home was 6738 square feet in 1995 and 5132 square feet in 2001.[102]

B. *Mount Laurel and Durham Today: Comparing the Results of Two States' Challenges to Exclusionary Zoning*

How do Mount Laurel Township, New Jersey, and Durham, Oregon compare today, decades after the legal challenges to their exclusionary zoning?

According to 2000 Census data, Mount Laurel's minority population was 14.3% of the total,[103] which is less than half the 34% share for New Jersey.[104] Durham's minority population, at 14.2% of its total population,[105] was close to the overall state percentage of 16.5%,[106] and slightly more than two-thirds of the Portland regional[107] average of 20.1%.[108]

Multifamily housing makes up 40% of Durham's housing supply,[109] compared with 31% in metropolitan Portland (Oregon portion only)[110] and 23% in the state as a whole.[111] Rental housing makes up 44% of Durham's housing,[112] which is higher than both the region

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[102] SONNY CONDER & KAREN LARSON, METRO DATA RES. CTR., METRO SINGLE FAMILY HOME PRICE TRENDS: DONUTS WITHOUT HOLES AND TURNIPS WITHOUT BLOOD 2 (2001), *available at* http://www.metro-region.org/library_docs/maps_data/sfrpricestudy1999_2000.pdf (last visited Apr. 4, 2003). By comparison, in one neighborhood, the average existing home was built around 1910, on a lot of 3900 square feet. *Id.* at 3.

[103] *See* U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CENSUS 2000, TABLE QT-PL: RACE, HISPANIC OR LATINO, AND AGE: 2000 [hereinafter CENSUS 2000 TABLE QT-PL] (Mount Laurel Township, Burlington County, N.J.).

[104] *See id.* (N.J.).

[105] *See id.* (Durham, Or.).

[106] *See id.* (Or.).

[107] The Portland "region" referred to in this Article is defined as the three core Oregon counties of Clackamas, Multnomah, and Washington.

[108] *See* CENSUS 2000 TABLE QT-PL, *supra* note 103 (Clackamas County, Or.); *id.* (Multnomah County, Or.); *id.* (Washington County, Or.).

[109] *See* U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CENSUS 2000, TABLE DP-4: PROFILE OF SELECTED HOUSING CHARACTERISTICS: 2000 [hereinafter CENSUS 2000 TABLE DP-4] (Durham, Or.).

[110] *See id.* (Portland, Or.).

[111] *See id.* (Or.).

[112] U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CENSUS 2000, TABLE QT-H2: TENURE, HOUSEHOLD SIZE, AND AGE OF HOUSEHOLDER: 2000 [hereinafter CENSUS 2000 TABLE QT-H2] (Durham, Or.).

(39%)[113] and the State of Oregon (31%).[114] In contrast, the supply of rental housing (16%) in Mount Laurel[115] is significantly smaller than in Burlington County (23%)[116] or New Jersey as a whole (34%).[117]

Rents follow the same pattern; rents in Durham ($708/month)[118] are only 5% higher than the regional median of $671[119] and about 14% higher than the State of Oregon as a whole.[120] Median rents in Mount Laurel ($939)[121] are about 24% higher than in both Burlington County[122] and the State of New Jersey.[123]

The mix of multifamily and affordable housing units in Durham is particularly interesting given that the median value of its single-family housing, which is $248,300,[124] is about 40% higher than the regional average, which is $176,565.[125]

C. *Home Prices and Affordability Inside the Portland Regional Urban Growth Boundary*

No discussion of Goal 10's implementation would be complete without presenting data on home prices in the Portland metropolitan region. The National Association of Home Builders (NAHB) Housing Opportunity Index continues to rank Oregon cities as among the least affordable in the nation.[126]

Yet the NAHB data show that metropolitan Portland, and other Oregon cities, have single-family home prices that are comparable with or lower than the prices paid in similar western metropolitan areas and also have more favorable ratios of average family income to

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[113] *See* U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CENSUS 2000, TABLE DP-1: PROFILE OF GENERAL DEMOGRAPHIC CHARACTERISTICS: 2000 (Clackamas County, Or.); *id.* (Multnomah County, Or.); *id.* (Washington County, Or.).

[114] CENSUS 2000 TABLE QT-H2, *supra* note 112 (Or.).

[115] *Id.* (Mount Laurel Township, Burlington County, N.J.).

[116] *Id.* (Burlington County, N.J.).

[117] *Id.* (N.J.).

[118] *See id.* (Durham, Or.).

[119] *See* CENSUS 2000 TABLE DP-4, *supra* note 109 (Clackamas County, Or.); *id.* (Multnomah County, Or.); *id.* (Washington County, Or.).

[120] *See id.* (Or.).

[121] *See id.* (Mount Laurel Township, Burlington County, N.J.).

[122] *See id.* (Burlington County, N.J.).

[123] *See id.* (N.J.).

[124] *See* U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CENSUS 2000, TABLE GCT-H9: FINANCIAL HOUSING CHARACTERISTICS: 2000 (Durham, Or.).

[125] *See id.* (Or.).

[126] *See* NAT'L ASS'N OF HOME BUILDERS, HOUSING OPPORTUNITY INDEX: FIRST QUARTER 2002 (2002), *available at* http://nahb.org/assets/docs/files/Regional_Alphabetical_813200285051PM.xls (last visited Feb. 6, 2003).

average home price.[127] The median sale price of homes in metropolitan Portland, Oregon-Washington, in the first quarter of 2002 was $167,000—compared with $146,000 in Phoenix, $177,000 in Riverside-San Bernadino, $208,000 in Denver, $218,000 in Sacramento, $234,000 in Seattle, and $451,000 in San Jose.[128] And the ratio of median family income to median sale price of single-family homes was better in Portland than all of those cities except Phoenix, even though the NAHB ranked Portland as less affordable than Riverside-San Bernadino, Denver, and Seattle.[129]

A study commissioned by Oregon homebuilder organizations noted that according to the NAHB Housing Opportunity Index, at the time of the study, only 35% of the houses for sale were affordable by the median household income in the Portland area.[130] However, a "separate analysis conducted for [the Oregon Housing Cost Study] indicated that in 1998, households classified as having median income (as defined by HUD) could still afford the median house price in Portland . . . ."[131]

A comprehensive review of academic research on the effect of urban growth boundaries on housing prices was commissioned by the Brookings Institution and prepared by academics from three universities.[132] They found little evidence that the regional urban growth boundary increased housing prices, in part because of the other policies reducing zoning barriers to building more houses on the same amount of land, such as Goal 10.[133]

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[127] *See id.*

[128] *Id.*

[129] *Id.*

[130] COMM. TO STUDY HOUS. AFFORDABILITY, OREGON HOUSING COST STUDY FINAL REPORT, at iii (1998).

[131] *Id.* at iii, 37. The Committee to Study Housing Affordability is a "broad-based statewide coalition with representation across the public and private sectors of the housing industry." *Id.* at i.

[132] ARTHUR C. NELSON ET AL., THE BROOKINGS INST., THE LINK BETWEEN GROWTH MANAGEMENT AND HOUSING AFFORDABILITY: THE ACADEMIC EVIDENCE (2002), *available at* http://www.brook.edu/dybdocroot/es/urban/publications/growthmang.pdf (last visited Feb. 6, 2003).

[133] *Id.* at Executive Summary (unpaginated). The literature specific to the Portland urban growth boundary and possible effects on home price is found later in this report. *Id.* at 24–26.

IV. The Environmental Impacts of Oregon's Efforts to Reduce Exclusionary Zoning

The impact of Oregon's reform of low-density exclusionary zoning on urban densities and sprawl is now becoming evident through statistical research and geographic information systems (GIS) analysis.[134] The Northwest Environment Watch of Seattle, Washington commissioned research of the three largest metropolitan regions along the north Pacific coast: Portland, Oregon-Washington,[135] Seattle-Everett-Tacoma, Washington,[136] and Vancouver, British Columbia.[137] The research was based on satellite imagery and analyses of 1990 and 2000 U.S. census, and 1991 and 2001 Canadian census data.[138]

The Northwest Environment Watch study noted that:

> Greater Portland sits astride the border between two states, each with its own approach to growth management. . . . As this analysis of US Census data and satellite imagery details, few places in North America illustrate more clearly the consequences of different planning regimes. During the 1990s:
> • The population of greater Portland—which includes Multnomah, Washington, and Clackamas Counties, Oregon, and Clark County, Washington . . . add[ed] 376,000 new residents during the decade for a total of just under 1.8 million . . . .
> • In the Oregon counties, total population increased by 270,000, and the number of people living in compact neighborhoods (defined as 12 or more people per acre) increased by 141,000 . . . .

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[134] *See generally* Northwest Env't Watch, Sprawl and Smart Growth in Metropolitan Portland: Comparing Portland, Oregon with Vancouver, Washington, During the 1990s (2002) [hereinafter Portland], http://www.northwestwatch.org/press/portlandgrowth.pdf (last visited Feb. 6, 2002).

[135] *Id. passim.*

[136] Northwest Env't Watch, Sprawl and Smart Growth in Greater Seattle-Tacoma *passim* (2002) [hereinafter Seattle-Tacoma], http://northwestwatch.org/press/seattle_sprawl.pdf (last visited Feb. 7, 2003).

[137] Northwest Env't Watch, Sprawl and Smart Growth in Greater Vancouver: A Comparison of Vancouver, British Columbia, With Seattle, Washington *passim* (2002) [hereinafter Vancouver], http://northwestwatch.org/press/vancouver_sprawl.pdf (last visited Feb. 7, 2003).

[138] *See id.* at 3; Portland, *supra* note 134, at 2; Seattle-Tacoma, *supra* note 136, at 3.

> • In Washington's Clark County, population grew by 106,000, and the number of residents in low-density, sprawling areas increased by 78,000. Per capita, Clark County converted about 40 percent more land from rural to suburban population densities than did the Oregon counties. And by the end of the period, Clark County's residential areas had partially or fully paved over 23 percent more land per resident than the Oregon counties.
> • If the Oregon counties had grown in the pattern of Clark County, suburban development would have overtaken an extra 14 square miles of farmland and open space—an area roughly twice that of Forest Park.
> • The major difference between Clark County's sprawl and Oregon's smart growth was Portland's growth management policies, which protect open space and foster compact communities.[139]

The increases in residential density fostered by Goal 10 were almost certainly a contributing factor to the shift to higher transit use in the Portland metropolitan region. Between 1990 and 2000 total passenger miles on the regional transit system, which serves the Oregon portion of the region, increased by more than 57%, more than the 37% increase in the total hours of transit service, and far more than the Portland metro area population growth rate of 23%.[140] It was also faster than the 26% increase in vehicle miles traveled on state highways in the region.[141] The consequences of this shift from cars to pub-

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[139] PORTLAND, *supra* note 134, at 2. The report on the Seattle area unfavorably contrasted the low-density development in greater Seattle with that in the Portland metro region: "But growth does not have to mean sprawl. If greater Seattle increased the average density of its developed areas to that of greater Portland's (excluding Clark County, Washington), suburban development would cover only a fifth as much land—saving about 135,000 acres." SEATTLE-TACOMA, *supra* note 136, at 2. The report on Vancouver, British Columbia showed a pattern of growth far more compact than that of either Seattle or the Oregon part of Portland. VANCOUVER, *supra* note 137, at 2.

[140] TRIMET, TRIMET FIXED ROUTE SERVICE AND RIDERSHIP 1 (2002), http://www.trimet.org/inside/pdf/factsheet02.pdf (last visited Apr. 4, 2003). *See generally* POPULATION RESEARCH CTR., PORTLAND STATE UNIVERSITY COMPONENTS OF POPULATION CHANGE FOR OREGON'S COUNTIES: APRIL 1, 1990 TO APRIL 1, 2000 (2000) (citing U.S. Census data for Clackamas, Multnomah, and Washington Counties, within which TriMet provides transit service), http://www.upa.pdx.edu/CPRC/90–00-census.PDF (last visited Feb. 7, 2003).

[141] This figure was calculated by summing the total vehicle miles traveled (VMT) on state highways in Clackamas, Multnomah, and Washington counties, which encompass the TriMet service area. OR. DEP'T OF TRANSP., OREGON VMT (OREGON VEHICLE MILES OF TRAVEL FOR STATE OWNED HIGHWAYS) (2002), http://www.odot.state.or.us/tdb/traffic_monitoring/vmt.htm (last visited Feb. 7, 2003). TriMet's service boundary encompasses

lic transportation may include the maintenance of existing good air quality.[142]

GIS comparisons between metropolitan Portland and other urban areas of similar size, like San Antonio, Texas and Columbus, Ohio, show that Portland's compact urbanization saved substantial amounts of rural land from development.[143] An analysis of past and future development patterns in Oregon's Willamette Valley, where two-thirds of the State's population and growth are located, revealed that in the twenty-five years before Oregon passed its comprehensive land use laws, the Willamette Valley's population grew by 570,000, and that during the same period about 900,000 acres of farmland were lost.[144] In the twenty-five years since the adoption of the land use planning goals, the Willamette Valley's population grew by 670,000 people, but only 105,000 acres of farmland were converted.[145]

Research conducted by the Pacific Northwest Forest and Range Experiment Station and Oregon State University revealed that the rate of conversion of private farm and forest lands to low- and high-density development in western Oregon slowed dramatically in the 1990s, even though the pace of growth was far greater in absolute numbers than in the 1980s.[146]

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about 600 square miles compared with the 3027 square miles in the three counties. *See* TRIMET, FACTS ABOUT TRIMET 1 (2002), http://www.trimet.org/news/pdf/factsheet02.pdf (last visited Feb. 7, 2003). But because the vast majority of the regional population—and driving—falls within the urban area served by TriMet service, it is unlikely the geographic mismatch makes a significant difference in regional VMT trends.

[142] Charles Schmidt observes:

> [Clean Air Act] violations in Portland have dropped from an average of 100 per year in the 1970s to none since 1987. . . .
>
> Says William Schroer, a project manager with Apogee Research in St. Paul, Minnesota, "Portland has held per-capita VMT steady over the past three years, an impressive accomplishment in an economy that is growing at twice the national average. Among other things, it means that in Portland, increases in driving are not currently eating into the decreased emissions benefits that technology has brought.

Charles W. Schmidt, *The Specter of Sprawl*, 106 ENVTL. HEALTH PERSP. A274, A279 (1998), http://ehpnet1.niehs.nih.gov/docs/1998/106-6/focus.html (last visited Feb. 7, 2003).

[143] Arthur C. Nelson & Thomas W. Sanchez, *Lassoing Urban Sprawl*, METROSCAPE, Winter 2003, at 13–19.

[144] *Special Report on the Willamette Valley Alternative Futures Project*, LANDMARK (1000 Friends of Or., Portland, Or.), Fall 2001, at 7.

[145] *Id.*

[146] DAVID L. AZUMA ET AL., U.S. DEP'T OF AGRIC., LAND USE CHANGE ON NON-FEDERAL LAND IN WESTERN OREGON, 1973–2000, at 35 (2002). This is consistent with prior research showing a significant drop in the conversion of forest land in western Oregon to urban- and low-density urban uses after the mid-1970s. DAOLAN ZHENG & RALPH J. ALIG, U.S.

CONCLUSION

More research is needed to quantify the environmental benefits, and any offsetting detriments, of the reform of exclusionary zoning, within the framework of Oregon's planning program. But enough evidence at the national level is already available to oblige advocates for affordable housing and advocates for environmental protection to re-examine their attitudes toward each other. In the arena of land use planning, zoning, and permitting, they share a common foe—low-density exclusionary zoning. Replacing that development pattern with something better, for people and the environment, is a natural alliance.[147]

DEP'T OF AGRIC., RESEARCH PAPER PNW-RP-518, CHANGES IN THE NON-FEDERAL LAND BASE INVOLVING FORESTRY IN WESTERN OREGON, 1961–94, at 8–9 (1999).

[147] For an account of the formation of that kind of alliance, see generally Jay Walljasper, *Portland's Green Peace: At Play in the Fields of Urban Planning*, THE NATION, Oct. 13, 1997, at 11–15.