

DA 24-0039

IN THE SUPREME COURT OF THE STATE OF MONTANA

MONTANANS AGAINST IRRESPONSIBLE DENSIFICATION, LLC,

Plaintiff / Appellee,

v.

STATE OF MONTANA,

Defendant.

Appeal from the Montana Eighteenth Judicial District Court

Gallatin County

Hon, Mike Salvangi, DV-16-2023-1248

LAND USE CONSULTANTS' BRIEF AS *AMICUS CURIAE* IN SUPPORT OF
THE PLAINTIFF

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Contents

INTEREST OF THE AMICUS CURIAE	6
STATEMENT OF THE CASE	6
SUMMARY OF THE ARGUMENT.....	6
ARGUMENT.....	7
1. Density does not improve housing affordability.....	7
2. ADUs do not improve housing affordability.....	10
3. Abolishing Single Family zoning does not improve housing affordability	12
4. The motives behind the contested laws must be questioned.	14
5. Financial motives of density advocates	14
6. Ideological motives of density advocates	16
7. Alternatives to forced density exist.....	17
8. Other challenges to housing affordability	22
CONCLUSION.....	24
CERTIFICATE OF COMPLIANCE	25
APPENDIX A.....	26
APPENDIX B.....	39
APPENDIX C.....	71
APPENDIX D.....	72
APPENDIX E.....	73
APPENDIX F	74
APPENDIX G.....	75
APPENDIX H.....	76

Table of Authorities

Cases

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Statutes

Growth Management Act, R.C.W, 36.70A (2024).....	17
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INTEREST OF THE AMICUS CURIAE

Amicus curiae represents legal and policy experts versed in matters of land use regulation, planning, and public policy as they apply to the State of Montana and other areas.

STATEMENT OF THE CASE

Montanans Against Irresponsible Densification LCC (“MAID”) filed a facial challenge to four laws, SB 323 MT (2023), SB 382 MT (2023), SB 528 MT (2023), and SB 245 MT (2023) (“contested laws”), passed by the 2023 Montana Legislature in the 18th Montana District Court. MAID asserts that the laws, which are directed at promoting affordable housing, do not satisfy the rational basis standard. Specifically, MAID argues that the contested laws fail to meet the Rational Basis standard because they are arbitrary and capricious. Additionally, MAID asserts that the contested laws do not meaningfully contribute to increasing the supply of affordable housing.

SUMMARY OF THE ARGUMENT

This brief informs the specific issue of whether the contested laws improve housing affordability. This brief explains why laws promoting density, accessory dwelling units, and abolishing single-family zoning do not improve affordability. This brief also discusses how the agendas behind these laws have influenced the debate surrounding this legislation in Montana. Finally, this brief will present alternatives that can create a system of land use policy that protects property owners and the public while providing for increased affordable housing.

ARGUMENT

1. Density does not improve housing affordability.

Density advocates assert that an increasing density will result in more affordable housing. *See e.g.* ShelterWF, www.shelterwf.org (2024). However, evidence contradicts this claim. Wendell Cox, *Higher Urban Densities Associated with the Worst Housing Affordability*, New Geography, <https://www.newgeography.com/content/007221-higher-urban-densities-associated-with-worst-housing-affordability> (2021); *See also Appendix A.*

Data from urban areas in the United States demonstrates that whenever a jurisdiction constrains growth to promote density housing affordability declines substantially.

Quigley and Rosenthal observe:

In a study of post-World War II growth patterns in the United Kingdom . . . found that so-called urban containment policies tend to increase the long-run price of buildable residential land and finished housing. J. M. Quigley & L. A. Rosenthal, *The effects of land use regulation on the price of housing: What do we know? What can we learn?*, *Cityscape*, 69-137 (2005).

Policies directed at increasing density through abolishing single-family zoning and permitting Accessory Dwelling Units (ADUs) do not improve housing affordability. D. Ramsey-Musolf, *Accessory dwelling units as low-income housing: California's Faustian bargain*, *Urban Science*, 2(3), 89 (2018). There are a number of factors that contribute to this conclusion. The first is infrastructure cost. Dense areas require more expensive infrastructure. Joshua Utt and Wendell Cox, *The Costs of*

Sprawl Reconsidered: What the Data Really Show, Heritage Institute, <https://www.heritage.org/report/the-costs-sprawl-reconsidered-what-the-data-really-show> (2004). This applies to both the cost of constructing multifamily housing, Gerard Mildner, *Density at any cost*, Portland State University (2014); *See Appendix B*, and the cost of maintaining infrastructure J. I. Carruthers & G. F. Ulfarsson, *Urban sprawl and the cost of public services*. *Environment and Planning B: Planning and Design*, 30(4), 503-522 (2003). Second, density does not improve affordability because constraining the supply of buildable land reduces the supply and increases the price. This constraint of supply affects all types of housing. Livable California, Vancouver's Smartest Planner, Prof. Patrick Condon, Says Upzoning is a Costly Mistake 2/6/21, <https://www.livablecalifornia.org/vancouver-smartest-planner-prof-patrick-condon-calls-california-upzoning-a-costly-mistake-2-6-21/> (2024). Additionally, constraining the supply of buildable land incentivizes real estate speculation and further drives up prices. Paul Cheshire, *Urban containment, housing affordability and price stability-irreconcilable goals*, SERC Policy Paper 4, London School of Economics, https://eprints.lse.ac.uk/59240/1/_lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_LSE%20Spatial%20Economic%20Research%20Centre_SUNAINA%20SERC_sercpp004.pdf (2009).

Densifying existing communities is prohibitively expensive compared to expanding into undeveloped land since existing infrastructure is often built to accommodate only a certain population density. Gerard Mildner, *Density at any cost*,

Portland State University (2014). In many instances densifying existing urban areas to accommodate a higher density will result in infrastructure costs higher than the value of any housing that is added. Although arguments can be presented for densifying areas where there is no buildable land to expand into, for the majority of areas in Montana there is ample land. Only .2% of Montana's land area is “urban space”. United States Census, *A state-sorted list of all 2020 Census Urban Areas for the U.S., Puerto Rico, and Island Areas first sorted by state FIPS code, then sorted by Urban Area Census (UACE) code*, <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html>, (2024). Considering this, to claim that densification is a logical policy is erroneous.

Also, density does not reflect what most people demand. Multiple surveys have consistently noted that people prefer single-family housing. Specifically, 80% of respondents prefer single-family housing. Rose Quint, *What home buyers really want*, National Association of Homebuilders, (2021). Promoting multifamily and ADUs as being a primary solution to the demand for housing does not reflect what the majority of people want. Research shows that promoting density does not increase the supply of affordable housing. V. Calder, *Zoning, land-use planning, and housing affordability*, Cato Institute Policy, Analysis (823), (2017).

Assumptions are made about densification that do not reflect the reality of people's lives or the current economy. For example, many density advocates claim that if people live in dense areas, they will not use personal automobiles. M. Curry, *Induced Demand Is Hard to Explain – But It's Crucial to Get It*, Cal Streets Blog,

<https://cal.streetsblog.org/2022/03/02/induced-demand-is-hard-to-explain-but-its-crucial-to-get-it>, (2024). However, data suggest that even in dense areas the majority of people still drive. For example, *Appendix C*, describes the total transportation profile for the European Union.

Density advocates do not contemplate how creating a system dependent upon walking or public transportation or increasing congestion limits people's access to both jobs. One study noted the number of jobs available to someone with access to an automobile is substantially greater than someone who relies on public transportation. Center for Transportation Studies, *COVID-19 pandemic substantially changed commuting patterns, job access*, University of Minnesota, (2023).

2. ADUs do not improve housing affordability

ADUs do not improve housing affordability. Research on ADUs has demonstrated that ADUs have little effect on improving housing affordability. D. Ramsey-Musolf, *Accessory dwelling units as low-income housing: California's Faustian bargain*, *Urban Science*, 2(3), 89 (2018).

Proponents of ADUs claim that ADUs increase the supply of affordable housing. This assertion is qualified by several factors that make it invalid. First, permitting ADUs does not imply that they will be rented at an affordable rate. Research on the impact of permitting ADUs in California noted that although the number of housing units technically increased, very few if any ADUs were rented out at an affordable rate *Id.* Additionally, permitting ADUs does not imply that they will

be built. One study involving New Hampshire cities observed that laws permitting ADUs resulted in few units being constructed. Boyajian, Lyla. *Accessory Dwelling Unit Research Brief*, University of New Hampshire (2024). Also, ADUs tend to be smaller and not attractive to people with families. One housing advocate observed:

Whatever the jurisdiction’s size limitations, the fact is ADUs are typically built as either studios or 1-bedrooms. For example, in California, which has more ADUs than any other state (30 percent of the 1.5 million total units), 86 percent of the renter-occupied ADUs have no more than two people living in them. While smaller units are needed, they won’t be enough on their own, and in many places larger families face a particularly acute housing crunch. These size constraints mean families with children usually can’t fit in ADUs, if they can even afford them—and they often can’t. In San Diego, one builder was allowed several development perks, such as waived infrastructure fees and setback variances, by the San Diego Housing Commission based on a commitment to keeping the units “rent restricted” by commission-set standards. Even so, the developer was able to charge \$2,000 per month for a 480-square-foot ADU. In Vancouver, British Columbia, ADUs (called “laneway homes”) are incredibly popular and easy to permit. They’re also fairly small, ranging from 600 to 900 square feet, and expensive, renting for about \$3,000 per month. Selby King, *Why ADUs can’t solve the nation’s housing crisis*, Shelterforce, <https://shelterforce.org/2022/05/17/why-adus-cant-solve-the-nations-housing-crisis/>, (2024).

Given that most ADUs are associated with an existing single-family home, ADUs present a challenge since the homeowner must also be a landlord. Given that most homeowners have little experience with property management, the idea that they will make good landlords must be questioned. Some housing advocates have expressed skepticism of the idea of “small landlords”:

Adding landlord responsibilities on top of development and construction is daunting enough to deter many homeowners from considering renting to an arm's-length tenant. . . . To lower-income homeowners . . . landlord duties are not only intimidating, they can be financially devastating if done improperly. "If you're not in this business, you can get really hurt by not knowing enough about the laws and the timelines for when things need to happen," . . . "There are a lot of things you have to know, and you almost feel like you need an attorney sometimes to meet those timelines or you can get sued. *Id.*

The impact of ADUs on infrastructure must be questioned. Infrastructure must be adequate to accommodate the additional residents. Even if the initial cost of adding an ADU is low, it is necessary to contemplate the costs associated with increased infrastructure use. It can be concluded that ADUs are not a realistic solution to increasing the supply of affordable housing.

3. Abolishing Single Family zoning does not improve housing affordability

Single-family zoning does not improve housing affordability. The lack of a relationship between single-family zoning and affordability can be demonstrated through data on affordability in the U.S. Affordability data from 1953 through 2023, *Appendix D* notes that for the majority of this period, house prices were stable and affordable despite the single zoning pervading.

Only after the 2000s and various finance-driven real estate bubbles did house prices increase. What this suggests is that since single-family zoning pervaded during this period, there is little correlation between single-family zoning and housing affordability. Additionally, communities that try to increase density are often the least affordable. *Appendix E*, details the Case-Schiller Index, median house

price/median income, for selected jurisdictions practicing urban containment and densification compared to the national average.

There are also reasons for single-family zoning that are both in the homeowner's and the public's interest. Single-family zoning originated from a desire of homeowners to have consistency in the type of building and use of the areas in which they lived *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926). Also, standards relating to lot sizes, setbacks, and parking requirements logically provide for infrastructure.

Contrary to the density advocate's claim, single-family zoning is neither racist or elitist. First, both race-based zoning and racially restrictive covenants have long been unconstitutional. Race-based zoning was banned in *Buchanan v. Warley* 245 US 60 (1917), and race-based covenants were banned in *Shelley v. Kraemer*, 334 U.S. 1 (1948). Second, people of color also prefer single-family housing. One survey conducted by the National Association of Homebuilders noted the strong preference of people of color for single-family housing:

[M]inorities are responsible for driving the increased interest in suburban living. Among Asian home buyers, the share in favor of a suburban location jumped nine points to 71% as a direct result of COVID-19, while also rising seven points among African-American and six points among Hispanic buyers. The share only increased one point among Caucasian buyers. Rose Quint (2021).

Efforts at forcing density have had a disproportionately negative effect on lower-income people and people of color. For example, the National Community

Reinvestment Coalition observed that African American homeownership was lowest in Portland Oregon, a city that practices densification. National Community Reinvestment Coalition, National Community Reinvestment Coalition, NCRC 2020 Home Mortgage Report: Examining Shifts During COVID-19, <https://ncrc.org/ncrc-2020-home-mortgage-report-examining-shifts-during-covid/> (2024).

When we consider Montana, it is obvious that there is no shortage of land. Only .2% of Montana is urban space. United States Census, (2024). Theoretically, Montana could accommodate multiple times its current population, housing them all in single-family housing on large lots without substantially impacting open space. We can compare Montana to California since they are approximately the same size. Montana currently has 1.4 million residents while California has 39 million residents. *Id.* California despite having approximately 35 times the population is less than 5% urban land. *Id.*

4. The motives behind the contested laws must be questioned.

There are financial or ideological motives behind those who advocate for density. It can be demonstrated that the bias resulting from the financial or ideological interests of density advocates frustrates the pursuit of housing affordability.

5. *Financial motives of density advocates*

Financial interests represent individuals who desire profit from residential real estate. This is evidenced through the promotion of policies that remove community-based and logical regulations in favor of deregulation that advantages investors. As

noted above, ADUs or densification does not improve housing affordability. However, these policies do increase the number of potential speculative investments. For example, in an article by density advocates Market Urbanism, delineates the profitable investment logic of buying single-family homes and adding ADUs. J. Fong, *Entrepreneurs and the Changing Political Economy of Housing*, Market Urbanism, <https://marketurbanism.com/2022/04/06/entrepreneurs-and-the-changing-political-economy-of-housing/> (2024); *See also Appendix F.*

The current rhetoric of densification also serves the interest of investors by ignoring the infrastructure costs to society as well as the opportunity costs of destroying existing desirable housing or not expanding into areas that could be built on. These costs represent an externality that is borne by the public who must pay a higher price for lower-quality housing.

Financial interests are also advantaged by promoting density. Specifically, constraining the supply of buildable land creates an opportunity for speculation within those areas. Especially, individual home buyers must pay a premium for housing within an urban boundary while speculators can buy large swaths of land outside of an urban boundary and then charge a significant premium for that land once it is zoned to be within the high-density area. A similar logic applies to ADUs and densifying existing areas since the potential to densify a single-family house will then add a premium to the price of the house and lot. The premium will be of little value to a prospective homeowner but will result in an opportunity for an investor.

Wendell Cox, *The consequences of urban containment*, New Geography, <https://www.newgeography.com/content/003928-the-consequences-urban-containment>, (2024).

It is also possible to attribute financial motives to density advocates by considering who funds them. Both Americans for Prosperity and the Frontier Institute are conservative think tanks who advocate for density. Americans for Prosperity is funded by the conservative Koch brothers. Factcheck.org, *Americans for Prosperity*, www.factcheck.org/2024/01/americans-for-prosperity-7/, (2024). According to their Form 990, Americans for Prosperity received \$108 million in contributions in 2022, I.R.S. Form 990, *Americans for Prosperity*, (2022), while the Frontier Institute received \$330,000 in contributions in 2022, I.R.S. Form 990, *Frontier Institute*, (2022), from “undisclosed donors”. Influence Watch, *Frontier Institute*, <https://www.influencewatch.org/non-profit/frontier-institute/> (2024). The Koch brothers have substantial real estate holdings and stand to profit from advocating for densification policies. C. Moris, *Koch Industries is gobbling up real estate*, Fortune, (March, 2021).

6. Ideological motives of density advocates

Many density advocates possess highly ideologically motivated views of what the world should look like. Specifically, density advocates generally view low-density development, single-family housing, and automobile use as being undesirable social ills. For example, one publication promoting density described low-density suburban housing as the “Devil’s Density.” Environmental Protection Agency, *Essential Smart*

Growth Fixes for Urban and Suburban Codes, 47, 11, “Avoid the Devil’s Density” (2009); *See also Appendix G*. This view contradicts what the majority of Americans find desirable. Density advocates often describe their idealized communities in vague terminology such as being “vibrant”, “livable”, “environmentally friendly”, and “resilient” without providing specific justification for what defines these adjectives. ShelterWF, (2024). Density advocates also advocate for similarly vague positions regarding rural development. Such groups often claim to promote “open space” and prevent “sprawl.” *Id.* However, there is a tremendous degree of ambiguity with these descriptors. For example, there is no one definition of what constitutes “sprawl”. A. Von Hoffman, *The Historical Origins and Causes of Urban Decentralization in the United States*, Joint Center for Housing Studies Harvard University, (2002).

Whether it is financial or ideological motivations, both groups through their policy positions or monetary interests demonstrate motives other than a desire for objective policy.

7. Alternatives to forced density exist

Alternatives to the contested laws should be considered. For alternative policies to be viable they must conform to accepted principles of land use and a comprehensive understanding of public policy and law. Most acknowledge that land use law should not be monolithic in its mandates. One discussion of this is the Ruckleshaus study of Washington’s Growth Management Act (GMA). Growth Management Act, R.C.W, 36.70A (2024); William D. Ruckleshaus Center, *A roadmap to Washington’s future*,

https://s3.wp.wsu.edu/uploads/sites/2180/2019/07/A-Road-Map-to-Washingtons-Future_Final-Report_6.30.19-1.pdf (2015). The study was conducted by Washington State University and University of Washington researchers. The Ruckleshaus study evaluated the performance of the GMA. The GMA which was enacted in 1991 required counties in Washington state create a comprehensive plan. When we look at the impact of the GMA it is obvious that the top-down nature of the law has hurt affordability and increased the social divide between rural and urban areas. The Ruckleshaus study conducted interviews with stakeholders throughout Washington. The study found a pervasive theme, namely, that most people were not supportive of the top-down nature of the GMA. Most people felt that policy should be bottom-up and flexible. An excerpt from the Ruckleshaus study summarizes these conclusions:

At nearly every workshop and interview participants made the statement, ‘one size does not fit all’ when referring to the current growth planning framework. Many participants said that to reflect the different circumstances, assets, challenges, opportunities, and priorities in the diverse regions of the state, the growth planning framework may warrant a realignment of state, regional, and local roles in planning and a greater range of local choices, financial tools, and regulatory flexibility. Most participants said that the controversy and litigation inherent in the growth planning framework is a result of different views about the local versus state role in planning. Many participants said the original intent of Washington’s planning system was to be “bottom up,” with maximum discretion reserved to counties and cities, and that the state’s role was to primarily be a provider of resources and guidance, rather than a “top-down” enforcer of state rules. . . Many rural area participants said that the rigorous GMA planning requirements were originally drafted to respond to growth pressures in rapidly-growing urban counties and cities along Interstate 5, but that this is not needed in rural counties and small towns. Many participants from rural counties and small towns said that the challenge in their jurisdictions was not how to manage rampant growth, but how to manage to grow. They said that their local conditions could not be accounted for in the current planning framework, that it limits

innovation and options for achieving the locally desired outcomes. Among the examples they cited were the GMA's provisions for Local Areas of More Intensive Rural Development (LAMIRDs) which they said were overly restrictive. Some said the LAMIRD rules create "economic sinkholes" that inhibit innovation and economic vitality and deprive counties of needed revenues. Some suggested that rural counties be allowed to opt out entirely of the GMA . . . Other participants focused on how to create a better fit between the GMA and the unique needs and circumstances of rural counties and small towns. Some suggested the creation of a GMA variant for rural counties that some called "GMA light" or "GMA 2.0." This concept would create a different alignment between the state and local roles and could incorporate several ways to create a better fit for rural counties. . . Overall, they said such an approach would provide rural counties and small cities a better balance of certainty and flexibility. . . . With regard to the state's nine urban counties, some participants said that due to the complexity, pace and scale of their growth challenges, these urban regions may warrant more detailed planning requirements, different fiscal tools, and closer coordination with state agencies than their rural counterparts. Some said that if future reforms to the growth planning framework are needed to meet the needs of these urban regions, it should not be presumed that the same need applies to the rural regions. They said that application of the "one size does not fit all" principle would suggest tailoring any future reforms to the GMA, or other parts of the planning framework, to fit the respective needs of the state's urban and rural regions. William D. Ruckleshaus Center, *A roadmap to Washington's future*, https://s3.wp.wsu.edu/uploads/sites/2180/2019/07/A-Road-Map-to-Washingtons-Future_Final-Report_6.30.19-1.pdf, 48-50, (2015).

Alternative policies should not reflect narrow financial interests and vague ideological notions of what society should look like. Instead, policy should be inclusive, vetted with diverse perspectives, and rooted in an understanding of competing social, economic, and environmental interests. Although the current zeitgeist of land use policy is to push for density and to villainize both single-family housing and automobile use alternative policies have been proposed. For example, legislation proposed in the 2021 legislative session aimed to create a procedurally

balanced empirically based land use policy. *See* H.B. 529, MT (2021); H.B. 528, MT(2021); H.B. 570 MT(2021). Also, a significant element within the planning community takes an approach to planning that is flexible and inclusive of different types of development. Berger, A., & Kotkin, J. (Eds.), *Infinite suburbia*. Chronicle Books, (2018).

Policies directed at increasing the supply of affordable housing must consider all actors and be based upon objective information such as market demand and the supply of buildable land rather than narrowly focusing on development styles that represent only a small niche of the built environment. Also, for a policy to be viable it must consider and balance the interests of both landowners and the public. The challenged laws fail to accomplish those goals since they fail to acknowledge that homeowners have an interest in the character of their neighborhood.

It is also likely that if implemented the challenged laws will only further complicate efforts at providing affordable housing. Although many of the proponents of these laws are likely well-intentioned, the lack of contemplation and development of the laws represents a fatal flaw in their design. For example, if zoning mandates uses that do not mirror or even acknowledge a community consensus what is there to stop regulations from mandating uses that depart even further from what a community deems desirable? Similarly, these laws do not contemplate that procedures already exist such as seeking variances under M.C.A. 76-2-223 (2024). Such variances are granted by elected officials and made in consideration of public as

well as local planning authority input. Given this incongruence, it should be acknowledged that the contested laws do not contemplate how to adjust established practices to meet new goals.

Also, the challenged laws do nothing to articulate what balance community interests should play in shaping the character of a neighborhood or community. Instead of presenting a system as to how to reconcile the competing interests of landowners and the community the challenged laws simply ignore this debate. Rather than ignoring such conflicts, effective policy must attempt to address the conflicts that have arisen under the existing system and improve the system whether it be regulatory or procedural to resolve these conflicts. One approach to addressing this would be to develop a system of “contiguous rights” *See Appendix H.* or variable interests in land that is adjacent to an individual parcel.

The challenged laws do not contemplate well-established policy analysis strategies that would help lawmakers and communities address the issue of providing their residents with attractive and affordable housing. For example, these laws do not contemplate well-established features of land use policy such as community input, site-specific infrastructure analysis, demand analysis, and community-level analysis. Although no regulatory framework will ever satisfy all stakeholders these laws take the state of land use policy in Montana in the wrong direction. Rather than abolishing single-family zoning or mandating ADUs, state-level policy could mandate that communities engage in an inventory analysis to determine what policies would be

justified in their community. Additionally, the conglomeration of interests that have promoted these laws has paid little or no attention to extending a rational planning process to rural areas where there is abundant land to expand on. Whether it is financially or ideologically unattractive to contemplate how better to facilitate development in rural areas, the current policies do little to take advantage of what clearly is an abundant resource in Montana. From this, it can be concluded that any rational land use policy should holistically and as objectively as possible contemplate policy from the perspective of a neutral arbiter rather than an advocate of a certain financial or ideological agenda. The challenged laws fail to do that.

8. Other challenges to housing affordability

Policy relating to affordability must also consider other factors that impact affordability beyond land use policy. Housing financialization whether it is speculative investors buying up owner-occupied properties or the proliferation of short-term rentals has had an effect on housing affordability. D. Anderson & S. Bokhari, *Real Estate Investors Are Buying a Record Share of U.S. Homes*, Refin, <https://www.redfin.com/news/investor-home-purchases-q4-2021/>, (2022).

For example, in 2022 43% of all single-family homes purchased in the Atlanta metropolitan area were purchased by investors. J. Adams, *Bad news for both metro areas home buyers and renters*, Fox 5 Atlanta, <https://www.fox5atlanta.com/news/bad-news-for-both-metro-atlanta-home-buyers-and-renters> (2022). Regardless of the efficacy of land use policy, without addressing

financialization it is unlikely that the housing affordability issue will be addressed in Montana.

The contested laws also do not contemplate well-studied policies relating to affordable housing. A review of academic literature on affordable housing concludes that policies including subsidies, vouchers, public housing, land trusts, and covenants designed to ensure affordability and owner-occupancy, are effective at promoting affordability. See T. Sinai & J. Waldfogel, *Do low-income housing subsidies increase the occupied housing stock?* *Journal of public Economics*, 89(11-12), 2137-2164, (2005); D. Carlson, R. Haveman, T. Kaplan, & B. Wolfe, *The benefits and costs of the Section 8 housing subsidy program: A framework and estimates of first-year effects.* *Journal of Policy Analysis and Management*, 30(2), 233-255, (2011); Center for Popular Democracy, *Social housing for all*, https://www.populardemocracy.org/sites/default/files/Social%20Housing%20for%20All%20-%20English%20-%20FINAL%203-21-2022_0.pdf (2022); The Affordable Housing Land Trust Act (AHLT Act), Maryland Code Annotated § 14-501, (2024); O.R.S. 456.270 (2024). These examples of policies highlight how the contested laws fail to contemplate policies available to help create affordable housing. Also, it is noteworthy that in some areas of Montana such as Bozeman, traditional planning approaches are already having a positive impact on affordability. For example, Maggie Collister as of September 2023, there is now a significant surplus of rentals in Bozeman as of September 2023. Maggie Collister, *Big Changes in Bozeman's*

Housing Market, Sterling CRE Advisors, <https://www.sterlingcreadvisors.com/big-changes-in-bozemans-housing-market/> (2024).

CONCLUSION

For the above reasons it can be concluded that the contested laws do not improve housing affordability. It should also be concluded that these laws need to be invalidated and replaced with ones that result from objective analysis and true public engagement and deliberation.

March 26th, 2024

 /s/ Andrew R. Thomas

Andrew R. Thomas, J.D., Ph. D., D.B.A.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the body of this brief contains 4,517 words, as calculated by Microsoft Word. The brief is double-spaced in size 14 Times New Roman Typeface.

/s/ Andrew R. Thomas _____

Andrew R. Thomas

APPENDIX A

Why Ending Single-Family Zoning Will Harm Montana

by Randal O'Toole, Thoreau Institute

Introduction

In recent years, high housing prices have led to proposals to meet U.S. and Montana housing needs by increasing the density of existing cities. This would include allowing homeowners to add “accessory dwelling units” to their homes, effectively turning them into duplexes. It would also include allowing apartments to be built in existing single-family neighborhoods. In 2023, the Montana legislature passed four bills that aim in this direction.¹

These new laws and any increased densities that result from them will do more harm than good to Montana residents and cities. Based on research I have done over the past three decades, this paper will show:

- Single-family zoning does not make housing expensive.
- What does make housing expensive is restrictions on development of rural areas on the fringe of urban areas.
- Americans overwhelmingly prefer to live in single-family homes and mostly prefer those homes to be in single-family neighborhoods, so efforts to densify cities would deny these preferences.
- Abolishing single-family zoning not only won't make housing more affordable, it may even make it less affordable.
- Although density advocates say they want to abolish single-family zoning to make housing more affordable, many actually have an anti-automobile agenda that has nothing to do with housing affordability—and despite wishful thinking on their part, density doesn't have much influence on auto driving either.
- Montana has the third-lowest population density of all the states, and urban areas currently cover just 0.2 percent of the state, so efforts to increase urban densities are basically absurd.

All these points will be presented in detail below.

Single-Family Zoning Does Not Make Housing Expensive

Every major American city except Houston has zoning.² Until recently all those zoning codes zoned much of the cities for single-family housing. In the last few years, urban planners and other advocates of urban density have made a concerted effort to blame high housing prices on single-family zoning.³

1. Diana Ionescu, “Montana Governor Signs Zoning Reform Bills,” *Planetizen*, May 24 2023, <https://www.planetizen.com/news/2023/05/123493-montana-governor-signs-zoning-reform-bills>.

2. Bernard Siegen, *Land Use Without Zoning* (Lexington, MA: Lexington Books, 1972, p. 24.

3. See, for example, Hunter Oatman-Stanford, “Demolishing the California Dream: How San Francisco Planned Its Own Housing Crisis,” *Collectors Weekly*, September 21 2018, <https://www.collectorsweekly.com/articles/demolishing-the-california-dream/>; Mike Eliason, “A Brief History of Seattle’s Anti-Urban Zoning,” *Medium*, March 1, 2018, <https://15kwhm2a.medium.com/a-brief-history-of-seattles-anti-urban-zoning-380e09fd0dd3>.

Yet a look at historic data reveals that single-family zoning has not made housing expensive. Los Angeles adopted a

zoning code in 1904.⁴ New York City adopted its zoning ordinance in 1916.⁵ Dallas also adopted a zoning plan in 1916.⁶ Portland adopted its first zoning ordinance in 1919.⁷ San Francisco's was approved in 1921;⁸ Seattle's in 1923;⁹ and Denver's in 1925.¹⁰ Many of these cities experienced explosive growth after World War II, yet housing in all of them remained quite affordable in 1970, more than 40 years after they passed their zoning ordinances.

Housing affordable can be measured by comparing median home prices with median family incomes. Someone can borrow three times their annual income and repay it under conventional mortgage rules (meaning no more than about 30 percent of income goes to housing) in 15 years or less. This suggests that housing is affordable if median home values are less than three times median family incomes. Depending on mortgage interest rates, at about four times incomes, people can repay mortgages in 30 years or less, making housing marginally affordable. At five times incomes, housing is unaffordable because people cannot get a conventional (30-year) mortgage on a home.

Of course, not all homes in a city or urban area cost the same just as not all incomes are the same. The range in housing prices will tend to reflect the range in incomes so that the most expensive homes can be affordable to the people with the highest incomes while the least expensive homes can be affordable to all but the lowest-income families.

From 1960 to 2000, the decennial census asked about one out of six households for information about their incomes and home values. Since 2005, the Census Bureau has conducted an annual American Community Survey of about 3.5 million households to find the same information. These data can be used to track housing affordability over time. In *The Planning Penalty*, I compared these data from the 1960 through 2000 censuses and the 2005 American Community Survey for 340 different urban areas.¹¹

The results showed that all American urban areas were quite affordable as late as 1970. Despite having the oldest zoning ordinance in the country, median housing in Los Angeles cost only 2.2 times median family incomes. New York's was a little more at 2.6 times and San Francisco's was 2.3 times incomes. Value-to-income ratios in Denver, Portland, and Seattle were all well below 2.0. The least affordable urban area in the U.S. was Honolulu, but with a value-to-income ratio of less than 3.2, it was still very affordable.

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4. "Understanding the Historical Significance of the Los Angeles Zoning Ordinance of 1904," King Lawyer, accessed February 12 2024, <https://reyabogado.com/us/what-was-the-los-angeles-zoning-ordinance-1904/>.
 5. Jason M. Barr, "Revisiting 1916 (Part I): The History of New York City's First Zoning Resolution," Building the Skyline, March 27, 2019, <https://buildingtheskyline.org/revisiting-1916-i/>.
 6. Alex Hoffman, "Zoning the City: A Historical Account of the Events and Context Surrounding the City's adoption of Zoning in 1930," Story Maps, July 25, 2023, <https://storymaps.arcgis.com/stories/b7bba31147ac4f9f81715d6ce776d56a>.
 7. E. Kimbark MacColl, *The Growth of a City: Power and Politics in Portland, Oregon 1915 to 1950* (Portland: The Georgian Press, 1979), pp. 298-301.
 8. Clyde O. Fisher Jr., "Land Use Control Through Zoning: The San Francisco Experience," *Hastings Law Journal*, vol. 13, #3 (February 1962), pp. 322-343.
 9. "Researching Historic Land Use and Zoning," Seattle Municipal Archives, 2024, <https://www.seattle.gov/cityarchives/search-collections/research-tips-and-tools/researching-land-use-and-zoning>.
 10. Austin Keithler, *2021 Year End Report* (Denver: Board of Adjustment, 2022), p. 2, <https://www.denvergov.org/files/assets/public/v/1/board-of-adjustment-zoning/documents/2021-yer-final.pdf>.
 11. Randal O'Toole, *The Planning Penalty: How Smart Growth Makes Housing Unaffordable* (Denver: Independence Institute, 2006), 47 pp, <https://i2i.org/wp-content/uploads/2011/02/IP-3-2006-2.pdf>.

Although Houston was the only major city with no zoning, it was far from the most affordable urban area. Value-to-income ratios in Oklahoma City were almost identical to Houston's, while in Fort Worth, Indianapolis, Philadelphia, and other major cities housing was more affordable than in Houston. Dallas' value-to-income ratio of 1.6 was only a little more than Houston's 1.4 even though both regions were similarly sized and growing at about the same rates.

What kept all these urban areas affordable was the availability of large amounts of land to housing developers outside of city limits. While every state had authorized cities to zone land well before World War II, most states did not allow counties to zone land until well after World War II. Texas still does not allow counties to zone and county zoning is optional in Indiana and Nevada, an option that several of the counties in those states don't exercise. Even where counties were allowed to zone, they commonly placed much of their land in "holding zones" that would "wait and see" what developers wanted to do with the land. If a developer purchased 1,000 acres of land and wanted to put single-family homes on that land, counties would readily rezone the land for whatever the developers wanted to build.¹²

Thanks to minimal or no zoning ordinances, developers and homebuilders were able to build millions of homes after World War II. Henry J. Kaiser became the nation's largest homebuilder in 1946 and 1947 by building more than 8,000 homes in California and Oregon.¹³ In 1948, the title of nation's largest homebuilder passed to the Levitt brothers, who built tens of thousands of homes in New York, New Jersey, and Pennsylvania.

Both Kaiser and the Levitts used assembly line techniques to keep new homes affordable. For example, the Levitts broke down home construction into 26 different operations and had individual crews dedicated to each operation. The result was that they were able to sell homes for less than \$8,000, or about \$100,000 in today's money.¹⁴

Housing today remains affordable in states that continue to allow such large-scale housing developments. In Texas, developers design "master-planned communities" that can cover thousands of acres. In addition to housing, such communities may include commercial areas, schools, parks, and other land uses. Developers subdivide the land into lots, install roads, utilities, and other infrastructure, and then sell the lots. To pay for the infrastructure, they create municipal utility districts that sell bonds and then charge homeowners fees to repay those bonds over 30 years. In this way, Houston and Dallas have each been able to grow by 10,000 people a year for several decades without housing becoming particularly expensive.

Rural Land-Use Restrictions Make Housing Expensive

Unfortunately, such large-scale developments are no longer legal in many states and regions. Hawaii became the first state to restrict such developments, which is why Honolulu had the least-affordable housing in the country in 1970. In 1961, the state legislature passed a land-use law that divided the state into urban and rural areas and heavily restricted development of the rural portions of the state.¹⁵

In 1973 the Oregon legislature created a state commission to write rules government urban and rural land uses. That commission required every major city in the state to draw an urban-growth boundary outside of which

12. Robert Nelson, *Zoning and Property Rights: An Analysis of the American System of Land-Use Regulation* (Cambridge: MIT Press, 1977), pp. 49–50.

13. Mark S. Foster, "Henry J. Kaiser and the Consumer/Suburban Culture: 1930–1950," *Western Historical Quarterly* 17, no. 2 (April 1986): 167–68, 178–80.

14. Colin Marshall, "Levittown, the Prototypical American Suburb," *The Guardian*, April 28, 2015, <https://www.theguardian.com/cities/2015/apr/28/levittown-america-prototypical-suburb-history-cities>.

15. "History," State of Hawaii Land Use Commission, 2024, <https://luc.hawaii.gov/about/history-3/>.

development was heavily restricted. The current rules state, for example, that no one is allowed to build a house on farmland unless they own at least 80 acres, actively farm that land, and earn (depending on the soil productivity) \$40,000 to \$80,000 a year from farming.¹⁶ Similar rules apply to forest land. As a result of these rules, urban development is confined to less than 1.5 percent of the state.

Although Hawaii's and Oregon's laws were deliberate, California backed into its restrictive land-use laws by accident. In 1963, debates between cities over which city would be allowed to annex land near their borders led the legislature to require every county to create a *local area formation commission* (LAFCo) that would approve or deny proposed annexations as well as the incorporation of new cities or the creation of municipal utility districts.¹⁷ It is likely that most Californians don't even know LAFCos exist, yet they are the primary reason why California housing is so expensive.

After LAFCos were created, city governments quickly realized that they could keep all new development, and the taxes they produced, within their borders by simply using LAFCos to deny annexations or the formation of new cities or municipal utility districts. During the 1970s, many California counties, including every county in the San Francisco Bay Area, drew urban-growth boundaries outside of which large-scale developments were forbidden. In counties that don't have growth boundaries, the LAFCos have adopted "spheres of influence" around each city outside of which sewer, water, and other services will not be provided to developers.¹⁸

The restrictions imposed by the growth boundaries and spheres of influence were hardened when the state passed the California Environmental Quality Act in 1990, which required preparation of an expensive environmental impact report for every major state or local decision. This law was soon interpreted by California state courts to apply to any changes in boundaries approved by LAFCos, including urban-growth boundaries.¹⁹

The cost of such environmental impact reports is so great that no urban-growth boundary has ever been expanded in the state. Virtually all land within the growth boundaries of San Francisco Bay Area counties has been developed, which means the only way to accommodate population growth is to tear down existing development and replace it with higher-density development. Of course, they could also accommodate growth by abolishing the growth boundaries, as nearly 70 percent of the land in Bay Area counties is outside the boundaries, but that would require legislation that the state is unwilling to pass.

Thanks to LAFCos, growth boundaries, and spheres of influence, 95 percent of the residents of California are legally confined to 5 percent of the land area of the state. The average density of California urban areas is greater than that of any other state and twice the average density of all other urban areas in the nation.²⁰

Growth boundaries and similar policies aimed at restricting rural development are collectively known as *growth management*.²¹ Since Oregon passed its law in 1973, several other states have passed growth-management laws,

16. "Using Income Criteria to Protect Commercial Farmland in the State of Oregon," Oregon Department of Land Conservation and Development, 1997, <https://ti.org/pdfs/Farmtest.pdf>.

17. "What Is LAFCo's Authority," California Association of Local Area Formation Commissions, accessed February 12 2024, <https://www.calafco.org/lafco-law/faq/what-lafcos-authority>.

18. Ben Giuliani, "Urban Development Boundaries," presentation given to the annual CALAFCO Conference, 2015, https://calafco.org/sites/default/files/resources/Urban_Growth_Boundaries_all_in_one.pdf.

19. *Bozung et al. vs. Ventura LAFCo*, 118 Cal.Rptr. 249, 529.

20. "County-level 2020 Census Urban and Rural Information for the U.S., Puerto Rico, and Island Areas," Census Bureau, 2023, https://www2.census.gov/geo/docs/reference/ua/2020_UA_COUNTY.xlsx.

21. Arthur C. Nelson, James B. Duncan, and Clancy J. Mullen, *Growth Management Principles and Practices* (Washington: American Planning Association, 1995), 172 pp.

including Florida in 1985;²² Washington in 1990;²³ and in various years most states on the eastern seaboard from Maryland to Maine.²⁴ Some cities or regional planning agencies have acted without specific state legislation. The city and county of Boulder Colorado bought development rights an area of land equal to nearly 9 times the area of the city itself in order to prevent development on the city's edge.²⁵ In 1997, the Denver Regional Council of Governments drew an urban growth boundary around that urban area.²⁶

All these laws work a little differently and those that aren't as restrictive have less of an effect on housing prices. However, there is generally a one-to-one correspondence between the implementation of growth management policies and a rise in housing value-to-income ratios above the national average. For example, the 2022 American Community Survey found that the nation's least affordable states are Hawaii, California, Washington, and Oregon. Meanwhile, states such as Indiana, North Carolina, and Texas remain affordable despite relatively rapid population growth.²⁷

A 2002 comparison of housing prices in San Jose vs. Dallas illustrated that growth management makes housing unaffordable in several ways. First, by limiting the amount of land available for new homes, it increases land prices by so much that it is difficult to make up for the increase by increasing densities. The 2002 study found that a 7,000-square-foot lot in Dallas cost \$29,000, but a 2,400-square-foot lot in San Jose cost \$232,000 or eight times as much.²⁸

Second, because housing costs are much higher, the cost of hiring skilled workers to build homes is higher. In San Jose, the labor to build an average home cost \$143,000 compared with \$100,000 in Dallas. Third, once cities know that developers cannot go anywhere else to build homes, they impose lengthy permitting processes and higher developer fees. In San Jose, it could take several years to get a permit to build compared with a few weeks in Dallas. This added about \$90,000 to the cost of a San Jose home. Developer fees in San Jose were \$29,000 to help fund parks, transportation, and other services compared with \$5,000 in Dallas which were strictly for utility hookups.²⁹ The net result was that a typical new home in San Jose cost more than \$500,000 compared with under \$150,000 in Dallas.

The differences have only gotten worse in the last two decades. A 2017 study found that land in Dallas, Houston, and other cities with no growth management typically cost about \$300,000 an acre, while in San Francisco and Honolulu the average cost was more than ten times as much; in Los Angeles it was nearly nine

22. Roy Carriker, *Florida's Growth Management Act: An Introduction and Overview* (Gainesville: University of Florida, 2006), p. 3, <https://ufdcimages.uflib.ufl.edu/IR/00/00/13/52/00001/FE64300.pdf>.

23. "Growth Management Act Laws and Rules," Washington State Department of Commerce, <https://www.commerce.wa.gov/about-us/rulemaking/gma-laws-rules/>, accessed February 12, 2024.

24. Ed Bolen, Kara Brown, David Kiernan, and Kate Konschnik, *Smart Growth: State by State* (San Francisco: Hastings College of Law, 2001), <https://legislature.vermont.gov/Documents/2018/WorkGroups/Act250/Reports%20and%20Resources/W~Sharon%20Murray~Smart%20Growth%20By%20State%202001~11-22-2017.pdf>.

25. "Acres of Open Space," Boulder County, 2024, <https://bouldercounty.gov/open-space/management/acres/>; "Open Space and Mountain Parks Land Acquisition and Water Rights Preservation," City of Boulder, 2024, <https://bouldercolorado.gov/services/land-acquisition-and-real-estate-services-program>. Between the city and county, more than 153,000 acres have been protected from development. The city of Boulder is about 17,500 acres in size.

26. Brad Calvert, "Urban Growth Boundary/Area," Denver Regional Council of Governments, 2016, p. 13, <https://drcog.org/sites/drcog/files/UrbanGrowthBoundary.pdf>.

27. Calculated from *2022 American Community Survey* (Washington: Census Bureau, 2023), tables B19113 (median family income) and B25077 (median home value).

28. Tracey Kaplan and Sue McAllister, "Cost of Land Drives Home Prices," *San Jose Mercury News*, August 4, 2002.

29. *Ibid.*

times as much; San Jose eight times; and Seattle four times as much.³⁰ San Jose has also significantly increased its developer fees including, ironically, fees on new housing of about \$20 per square foot to help pay for affordable housing that would not be needed if the region hadn't made housing unaffordable.³¹

Americans Prefer to Live in Single-Family Neighborhoods

Surveys have consistently shown that about 80 percent of Americans prefer or aspire to live in single-family homes.³² This means that density policies that aim to increase the share of people living in multifamily housing are specifically seeking to deny people their preferred housing choices.

Advocates of dense housing have tried to justify this in several ways. One major tactic has been to demonize single-family zoning as being racist in origin.³³ In fact, only a few cities included race in their zoning codes before doing so was ruled unconstitutional by the Supreme Court in 1917. If everything that was once associated with racism were banned today because of that association, we would no longer have public schools, public transit, restaurants, hotels, or drinking fountains.

Planners have also claimed that American tastes are changing and that most now or will soon prefer to live in multifamily housing. Supposedly Millennials, who were raised in the suburbs, want to live in “lively” cities and Baby Boomers, as they become empty nesters, want to downsize to smaller homes in walkable neighborhoods.

These claims reached a zenith in 2006 when Virginia Tech planning professor Arthur Nelson—who later taught in the University of Utah urban planning school and is now teaching at the University of Arizona—predicted in the *Journal of the American Planning Association* that U.S. suburbs would have 22 million surplus homes by 2025. Nelson argued that, to meet the future demand for dense housing, cities today needed to “reshape the landscape” by promoting the development of such housing.³⁴

Nelson's research was shoddy, often citing only “author's analysis” for many of his conclusions. He also clearly has no understand of the basic concepts of supply and demand. For example, in a report written for the Twin Cities Metropolitan Council, he predicted (again citing only himself) a huge increase in “demand” for

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30. David Albouy, Gabriel Ehrlich, and Minchul Shin, “Metropolitan Land Values,” *The Review of Economics and Statistics*, vol. 100, no. 3 (July 2018), table 2, p. 460, https://static1.squarespace.com/static/62f1eb5aa4471e693f087c96/t/63059716fa08022c8d214926/1661310748868/landvalue_index.pdf.
 31. “Affordable Housing Impact Fee,” City of San Jose, 2019, <https://www.sanjoseca.gov/your-government/departments-offices/housing/developers/inclusionary-housing-programs/affordable-housing-impact-fee>.
 32. See, for example, Charlotte O'Malley, “80 Percent of Americans Prefer Single-Family Homeownership,” *Builder*, August 13, 2013, <https://www.builderonline.com/money/economics/80-percent-of-americans-prefer-single-family-homeownership-o>; “OR – Statewide Housing Supply,” Survey by American Strategies, 2024, <https://drive.google.com/file/d/1m9hxosRUZylavv5eeRt9fQwX7IBOY4EI/view>; Dowell Myers and Elizabeth Gearin, “Current Preferences and Future Demand for Denser Residential Environments,” *Housing Policy Debate*, vol. 12 no. 4 (April 2001), pp. 633–659.
 33. Erin Baldassari and Molly Solomon, “The Racist History of Single-Family Home Zoning,” KQED, 2020, <https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning>; Supriya Yelimeli, “Berkeley Denounces Racist History of Single-Family Zoning,” *Berkeleyside*, February 24, 2021, <https://www.berkeleyside.org/2021/02/24/berkeley-denounces-racist-history-of-single-family-zoning-begins-2-year-process-to-change-general-plan>.
 34. Arthur C. Nelson, “Leadership in a New Era,” *Journal of the American Planning Association*, vol. 72, no. 4 (Autumn 2006), pp. 393–407, <https://ti.org/pdfs/LeadershipinaNewEra.pdf>. The 22-million surplus home prediction is in table 5.

townhouses and multifamily housing.³⁵ Demand is not a single number but is a relationship between prices and quantities that people want at those prices, yet his analysis specified single numbers without mentioned prices. Despite this, his predictions became popular within the urban planning profession and led to scare headlines in CNN, the *Atlantic Monthly*, and other news sources proclaiming that suburbs would become “the next slums.”³⁶

Less than a year away from 2025, there is no sign of a surplus of suburban homes; if anything, there is a greater shortage of such homes than ever before. Despite this, Nelson’s paper has been used and is still being used to justify much rezoning as well as subsidies to high-density housing projects that require such subsidies because people didn’t really want to live in them.

Historic data indicate that Americans not only want to live in single-family homes, they want those homes to be in single-family neighborhoods. In 1890, less than 18 percent of urban households owned their homes compared with more than 60 percent in rural areas.³⁷ Urban homeownership rates weren’t low because of the cost of housing; working-class families were actually more likely to own their home than middle-class families.³⁸ Instead, rates were low because people couldn’t trust that incompatible uses would not move in next door, thus lowering their property values.

During the 1890s, developers learned that homes or homesites would sell faster if they put protective covenants on their developments limiting the use of lots to single-family homes. These covenants did not increase the cost of housing, but they did increase its desirability. Single-family zoning was specifically invented to offer the same desirability to existing neighborhoods of single-family homes. Between covenants and zoning, urban homeownership rates grew to 59.7 percent by 1960.³⁹

Today, nearly everyone who owns a home in an area zoned for single-family housing bought that home after such zoning. Few if any of today’s homeowners lost any property rights when such zoning took place; in fact, when people learn that cities or states propose to abolish single-family zoning, they often argue that such an abolition would take away their property rights.⁴⁰ In this case, it is the right to say, “I will not develop my property with more than a single-family home on the condition that my neighbors also do not develop their properties with more than single-family homes.”

People have several good reasons to prefer living in single-family neighborhoods. The first is less congestion, as low densities mean there aren’t enough people or vehicles to create meaningful congestion. Adding multifamily housing to a neighborhood whose street network has been designed to support single-family homes will significantly increase vehicle traffic and make congestion worse.

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35. Arthur C. Nelson, *Metropolitan Council Area Trends, Preferences, and Opportunities: 2010 to 2020, 2030 and 2040* (St. Paul: Metropolitan Council, 2014), p. 32, <https://metro council.org/getattachment/571ff237-6d73-4e26-86bc-3c12978b1b89/.aspx>.
 36. Christopher B. Leinberger, “The Next Slum?” *Atlantic Monthly*, March 2008, <https://www.theatlantic.com/magazine/archive/2008/03/the-next-slum/306653/>; Lara Farrar, “Is America’s Suburban Dream Collapsing into a Nightmare?” CNN, June 16, 2008, <https://www.cnn.com/2008/TECH/06/16/suburb.city/index.html>.
 37. Michael R. Haines, “Homeownership and Housing Demand in Late Nineteenth Century America: Evidence from State Labor Reports,” working paper, Colgate University, Hamilton, NY, 2011, p. 1.
 38. Margaret Garb, *City of American Dreams: A History of Homeownership and Housing Reform in Chicago, 1871–1919* (Chicago: University of Chicago, 2005).
 39. *1960 Census of Housing: Volume 1, Part 1, United States Summary* (Washington: Census Bureau, 1961), table 2;
 40. Douglas Newby, “Homeowner’s Greatest Property Right Is Single-Family Zoning,” *NewGeography*, August 17, 2022, <https://www.newgeography.com/content/007548-homeowner-s-greatest-property-right-single-family-zoning>.

Second, single-family neighborhoods tend to have less crime, not because criminals are more likely to live in multifamily housing but because multifamily housing tends to be more inviting to burglars and other criminals. After comparing crime rates with architectural features on thousands of city blocks, architect Oscar Newman concluded that housing with a preponderance of common areas were more likely to attract crime than housing with lots of private land because it's easier to identify and exclude people who don't belong from private land than from the commons.⁴¹ Building multifamily housing in a single-family neighborhood is likely to bring crime to the neighborhood not because the multifamily residents are criminals but because multifamily housing has more common areas that attract crime.

Third, rezoning a single-family neighborhood for multifamily will often require significant changes to the neighborhood's infrastructure. New water and sewer lines to serve the increased number of residents will require that streets be torn up. Some of the costs of that infrastructure are likely to be imposed on existing property owners either through increased property taxes or reduced urban services.

In the end, it really doesn't matter why people prefer single-family neighborhoods. What matters is that they do prefer such neighborhoods and, as will be shown below, planners have no good reasons to try to force higher densities on such neighborhoods.

Abolishing Single-Family Zoning Will Not Make Housing More Affordable

After growth management policies have made housing unaffordable, planners argue that increasing the density of single-family neighborhoods will help make housing affordable again. While it seems reasonable to think that increasing housing supply will reduce the cost of housing, there are several reasons why this isn't true.

First, apartments that average around 1,000 square feet in size are not the functional equivalent of single-family homes that today average around 2,000 square feet. If the nation had a shortage of pickup trucks, no reasonable person would think that constructing more subcompact cars would help relieve that shortage as subcompact cars have very different uses from pickup trucks. In the same way, small apartments can't offer the same functionality as larger single-family homes.

This objection could be partially answered by building larger apartments. However, such apartments are still not the same as single-family homes, which offer more privacy, including a private yard. Single-family homes are also more flexible; try adding a new bedroom onto an apartment. Even when sold as condominiums, multifamily dwellings are generally subject to strict rules and monthly condominium association fees that homeowners can often avoid.

Increasing the supply of multifamily dwellings in a market that is suffering from a shortage of single-family homes won't make those single-family homes significantly more affordable. Most Americans appear to view multifamily housing as temporary housing: something for students and other people who plan to live in an area only a short time or who are trying to save enough money to put a down payment on a single-family home. Even people who want to live in multifamily housing generally feel that way during a few limited stages of their lives, mainly when young and single or old and no longer able to drive.

Worst of all would be increasing the supply of multifamily dwellings by tearing down existing single-family homes. This would make the single-family housing shortage even worse than before.

41. Oscar Newman, *Creating Defensible Space* (Washington: Department of Housing and Urban Development, 1996), pp. 14–15.

On top of this, the kind of multifamily housing preferred by density advocates today—three- to five-story buildings—is more expensive to build than single-family homes. Such taller buildings require more steel and concrete and, for four stories and up, need an elevator as people are no longer willing to climb several flights of stairs to get to their residence.

When a San Francisco Bay Area planning commission contemplated denser zoning, California developer Nicholas Arenson testified that three-story construction costs about 50 percent more per square foot than single-family housing and “sells at a discount” because people find it less desirable. Four-story construction, he said, costs twice as much per square foot as single-family housing and “sells at a further discount.” Five stories and up with a built-in parking garage costs three to four times as much as single-family homes.⁴²

Replacing housing that people want with more expensive housing that people don’t want is not going to make housing more affordable. A comparison of urban area densities with affordability shows a strong negative correlation (see chart).

The affordability of urban areas such as Los Angeles, Portland, San Francisco-Oakland, San Jose, and Seattle have dramatically declined as their population densities have increased (see table). Some might say their densities haven’t increased enough, but how dense is dense enough? If higher densities were truly more affordable, then Hong Kong would be the most affordable city in the world and Manhattan the most affordable housing market in the United States. At about 67,000 people per square mile, Hong Kong may be the world’s densest urban area and its value-to-income ratio is 18.8.⁴³ Manhattan has about 70,000 people per square mile and its value-to-income ratio in 2021 was 8.6. Higher density areas are less affordable because both land and construction are more expensive.

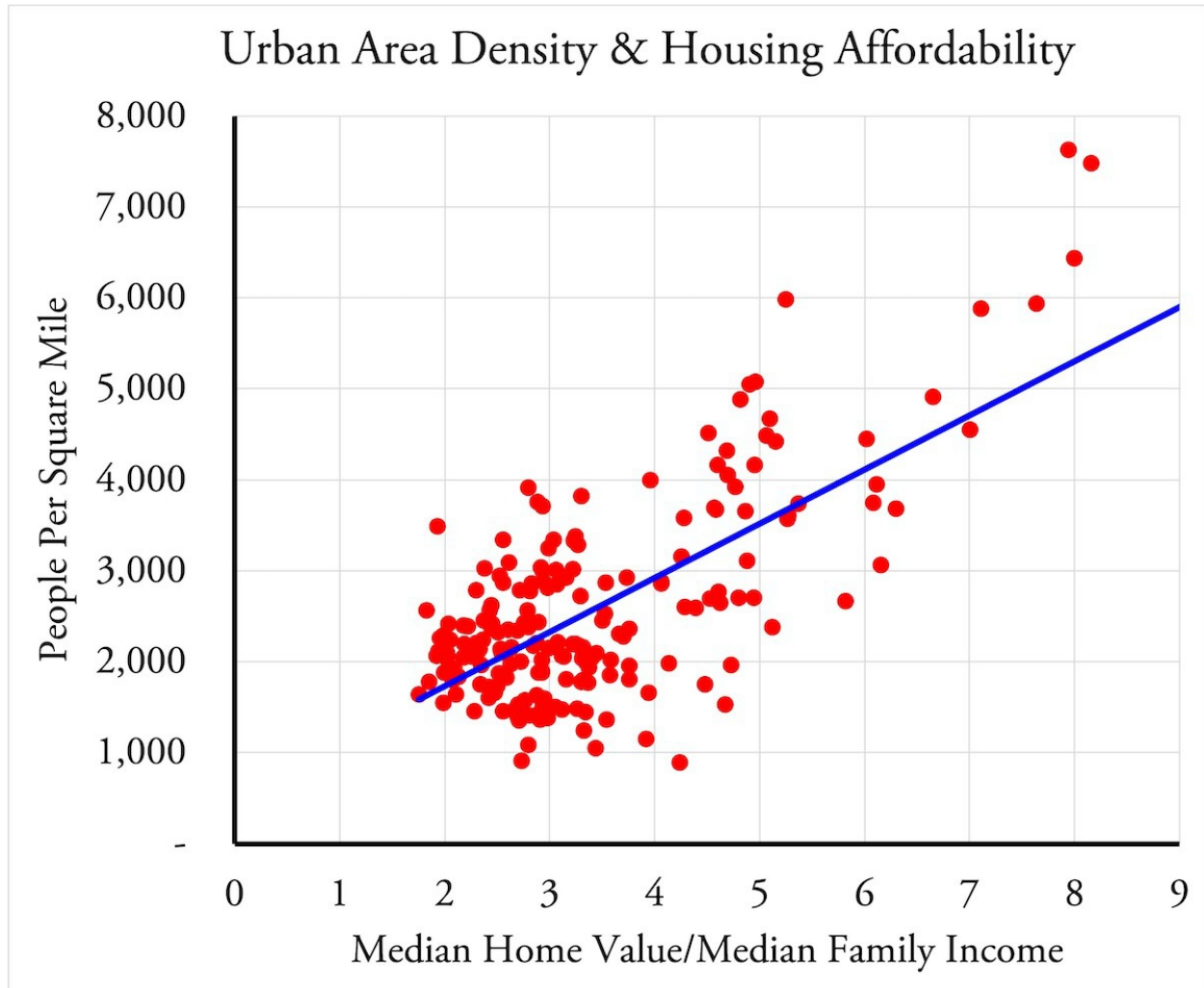
Density and Value-to-Income Ratios Over Time

	1970 Density	1970 V2I	2020 Density	2021 V2I
Denver	3,577	1.8	4,168	4.6
Los Angeles	5,313	2.2	7,476	8.2
Portland	3,092	1.8	4,052	4.7
San Diego	3,148	2.2	4,550	7.0
San Francisco	4,387	2.3	7,626	7.9
San Jose	3,699	2.2	6,436	8.0
Seattle-Tacoma	2,899	1.8	3,607	5.3

Increasing densities did not make these urban areas more affordable. Source: Census Bureau.

42. Nicholas Arenson, “Testimony before the San Francisco Bay Area Metropolitan Transportation Commission,” 2018, <https://ti.org/pdfs/NicholasPerspective.pdf>.

43. Wendell Cox, “The Evolving Urban Form: Hong Kong,” *NewGeography*, March 7, 2012, <https://www.newgeography.com/content/002708-the-evolving-urban-form-hong-kong>; Wendell Cox, *Demographia International Housing Affordability: 2023 Edition* (Houston: Urban Reform Institute, 2023), p. 2, <http://demographia.com/dhi.pdf>.



Higher densities generally mean lower housing affordability. This chart shows the nation's 200 largest urban areas with densities from the 2020 census and affordability from the 2021 American Community Survey. (Due to the pandemic, the Census Bureau didn't conduct a detailed American Community Survey in 2020.)

Affordability Is Not the True Goal of Densification

Although urban planners may argue that higher densities will allow for more affordable housing, housing affordability was not the original reason for growth boundaries and other density policies. When such policies were first proposed in Hawaii in 1961 and in other states in the 1970s, the stated goals mainly focused on protecting farms, forests, and open space.

The United States has a huge abundance of farms, forests, and open space. According to the Department of Agriculture, the country has about 1.1 billion acres of agricultural lands but uses only about a third of those acres for growing crops.⁴⁴ The number of acres used for growing crops has declined in the past 40 years not

44. *Summary Report: 2017 National Resources Inventory* (Washington: Natural Resources Conservation Service, 2020), table 2.

because of urban encroachments but because per-acre productivities of most major crops have grown faster than the nation's population.⁴⁵

The U.S. also has plenty of forest lands. According to the Forest Service's latest analysis, the country has about 765 million acres of forest land growing about 25 billion cubic feet of wood per year but harvests only about 15 billion cubic feet of wood each year.⁴⁶

Nor is urban growth threatening open space. The Department of Agriculture estimates that less than 6 percent of the nation's land area has been developed including rural developments such as roads. In Montana, only 1.2 percent has been developed.⁴⁷ The Census Bureau estimates that, as of the 2020 census, urban areas cover only 2.9 percent of the nation's land and just 0.2 percent of Montana.⁴⁸

Hawaii provides an instructive example of the unintended consequences of creating housing shortages to protect abundant farmlands. The legislature's main reason for passing the state's 1961 land-use law was to protect farms. The result of that protection was that the state's housing prices became the highest in the nation. This made it impossible for Hawaii farmers, whose crops competed with farms in Costa Rica, Fiji, and other tropical areas, to pay farm workers enough for the workers to be able to afford housing.

As a result, the number of acres used for growing crops declined by 72 percent between 1982 (the earliest year for which data are available) and 2017.⁴⁹ Instead of crops, farmers used their land for pasture, introducing non-native grasses to feed cattle. Native vegetation was naturally fire resistant and so were crop lands as farmers tended to burn the residue after harvesting each year. The non-native grasses, however, were not fire resistant, leading to the huge fires that destroyed much of the town of Lahaina and killed more than 100 people in August 2023.⁵⁰

In recent years, density advocates have dropped claims about the need to protect farms, forests, and open spaces in favor of claims that high-density cities are more climate friendly. Supposedly, people in such cities drive less and therefore generate fewer greenhouse gas emissions.

In 2008, University of California, Irvine economist David Brownstone reviewed these claims in detail. He discovered that most analyses that concluded that people in denser cities drive less failed to account for selection bias, that is, that people who want to drive less tend to live in higher density areas. After adjusting for selection bias, Brownstone concluded, the effect of density on driving is "too small to be useful" in reducing emissions.⁵¹

Even before adjusting for selection bias, it isn't likely that residents of higher-density areas emit significantly fewer greenhouse gases than those in lower density areas. This is because higher-density areas tend to be more congested than lower-density ones and automobiles use more fuel and emit more greenhouse gases, per mile, when driving in congested traffic.

45. *Crop Production Historical Track Records* (Washington: National Agricultural Statistics Service, 2018).

46. Sonja N. Oswalt, W. Brad Smith, Patrick D. Miles, and Scott A. Pugh, *Forest Resources of the United States, 2017* (Washington: Forest Service, 2019), Appendix A, tables 1, 34, and 35.

47. *Summary Report: 2017 National Resources Inventory*, table 1.

48. "County-level 2020 Census Urban and Rural Information for the U.S., Puerto Rico, and Island Areas," Census Bureau, 2023, https://www2.census.gov/geo/docs/reference/ua/2020-UA_COUNTY.xlsx.

49. *Summary Report: 2017 National Resources Inventory*, table 1.

50. Lucie Aubourg, "Invasive Firestarter: How Non-Native Grasses Turned Hawaii Into A Tinderbox," Phys.org, August 18, 2023, <https://phys.org/news/2023-08-invasive-firestarter-non-native-grasses-hawaii.html>.

51. David Brownstone, "Key Relationships between the Built Environment and VMT," Transportation Research Board, 2008, p. 7, tinyurl.com/y9mro58.

According to data published by the Department of Transportation, people living in densities of 1,000 to 2,000 people per square mile (which would include the Helena, Kalispell, and Missoula urban areas) drive an average of 20.7 miles per day while people living in densities of 2,000 to 4,000 people per square mile (which would include Billings and Bozeman) drive 20.3 miles per day.⁵² However, according to the Department of Energy, this small reduction in driving is offset by reduced fuel economy due to lower average speeds in the higher-density areas, with the result that the average person in the higher-density areas use 0.3 percent more gallons of motor fuel per day than people in the lower-density areas.⁵³ The real lesson behind the tiny difference is that density does not have much influence on either driving or greenhouse gas emissions.

Density advocates also argue that people living in apartments will use less residential energy than people living in single-family homes. This also turns out to be wrong. The Department of Energy also estimates that people living in multifamily use 42 percent more energy per square foot on their housing than people living in single-family homes.⁵⁴ Thus, building more multifamily housing won't save energy unless people are willing to live in apartments that are at least 30 percent smaller than their single-family homes.

In short, all the reasons density advocates have for trying to get people to live in higher densities are just as incorrect as claims that higher densities will make housing more affordable. The bottom line is that there is no justification for trying to deny Americans their preference for living in single-family homes in single-family neighborhoods.

Conclusions

With an average of about 7.5 people per square mile, Montana has the third-lowest population density of the 50 U.S. states; only Alaska and Wyoming are lower. Even the highest-density states, New Jersey and Rhode Island, remain more than 60 percent undeveloped. In Montana, well over 98 percent is undeveloped. The notion that Montana should try to increase urban densities to save rural areas from development is absurd.

Nor will promoting urban densities do any of the other things promised by density advocates. Higher densities in Montana won't reduce pollution or greenhouse gas emissions and won't make housing more affordable and it. In fact, it is much more likely to make housing less affordable.

What zoning reforms that lead to higher densities will do is make Montana urban neighborhoods less desirable to live in, with more congestion, more crime, and in all probability higher taxes. This is likely to reduce homeownership rates as people won't feel secure investing in housing when they can't be certain the neighborhoods the houses are in will remain stable. For all these reasons, the zoning reform laws passed by the 2023 legislature should be repealed.

52. "Data Explorer Tool," 2017 National Household Travel Survey, 2018, <https://nhts.ornl.gov>. Using this tool, I collected data for variables including number of vehicles, number of people, vehicle miles of travel, average trip miles, average trip duration, and average vehicle occupancies by population density.

53. Stacy C. Davis and Robert G. Boundy, *Transportation Energy Databook Edition 40* (Department of Energy, 2021), table 4.34, https://tedb.ornl.gov/wp-content/uploads/2022/03/TEDB_Ed_40.pdf.

54. *Building Energy Data Book* (Washington: Department of Energy, 2011), table 2.1.11.

About the Author

Randal O'Toole has spent 50 years reviewing and critiquing government land-use plans. O'Toole received a degree in forest management from Oregon State University in 1974 and spent the next 25 to 30 years helping environmental groups such as the Greater Yellowstone Coalition, Montana Wilderness Association (now Wild Montana), Wilderness Society, Sierra Club, and many others review and influence land-use plans written by the Forest Service and other government forest agencies.

In 1995, O'Toole started reviewing land-use plans adopted by Portland and other Oregon cities that aimed to increase urban densities. Since then he has reviewed urban plans for Denver, Minneapolis, Phoenix, San Jose, Seattle, St. Louis, and many other cities.

His reviews rely heavily on housing and transportation data published by the Census Bureau, Department of Transportation, and other government agencies. Based on these data, O'Toole's 2006 paper, *The Planning Penalty: How Smart Growth Makes Housing Unaffordable*, showed how different kinds of zoning rules have influenced home prices. His 2012 book, *American Nightmare: How Government Undermines the Dream of Homeownership*, is a detailed examination of the history of city planning and zoning and their effects on housing prices.

About the Thoreau Institute

The Thoreau Institute is a non-profit organization dedicated to finding ways to protect the environment without big government. Since 1975, the institute has reviewed hundreds of land-use and transportation plans written by federal, state, and local agencies. These reviews have had a significant influence on public policy.

For example, Thoreau Institute reviews of Forest Service plans helped persuade that agency to greatly reduce its money-losing timber sale program. Thoreau Institute reviews of urban transportation plans helped persuade voters in Nashville, San Antonio, St. Petersburg, Winnipeg, and other cities not to spend billions of dollars on obsolete transportation projects.

In 2023, Thoreau Institute reviews of transportation plans in Arizona, Colorado, Minnesota, Missouri, North Carolina, and Oregon were published by think tanks in those states. In 2024, a Thoreau Institute critique of affordable housing programs will be published by Oregon's Cascade Policy Institute.

APPENDIX B

Density at Any Cost

Dr. Gerard Mildner

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State University

November, 2014

In September, the Portland region's Metro government released its draft 2014 Urban Growth Report. This Report deserves special attention by citizens and professionals in the local business community because it distorts economic data and will lead the region to make decisions that will harm economic growth. Much of the economic damage comes from an unrealistic view of housing markets, where the plan envisions a doubling of apartment rents over twenty years, creating a large burden for low-income households in the region. In addition, the plan assumes multi-billion dollar unfunded mandates on local government to subsidize housing and transportation projects. And ironically, the Metro plan is likely to cause net environmental harm to the global climate by shifting population growth from our region to places in the southeast and southwest United States where carbon emissions will be higher. In this article, I will explain the purpose of Metro's study and outline the implications of this Report.

Background

Under Oregon's land use laws, local governments are required to assess the capacity of their urban growth boundary (UGB) every five years and determine whether the UGB contains sufficient land supply to support 20 years worth of population growth and employment growth. In the case of the Portland region, the elected regional government, Metro, produces a demographic and economic forecast for the region to begin this planning process. The anticipated growth is then allocated between the Portland Metro jurisdiction and non-Metro locations in Clark County, Washington, and exurban communities such as Woodburn and Newberg. Metro then consults local governments to assess their capacity to receive that growth, using existing zoning regulation to estimate the supply potential of the region. The reconciliation of demand and supply of residential and employment land determines if the Urban Growth Boundary needs to be expanded.

Metro's UGB was established in the late 1970's and was initially set with a lot of capacity for future growth. In part due to the extended economic recession of that period, Metro's UGB was not significantly expanded in the 1980's. Economic growth in the region picked up in the 1990's, and using the process described above, Metro has expanded the Urban Growth Boundary in 1996, 2001, 2006, and 2011, primarily in eastern Clackamas County, but also in parts of Multnomah County and Washington County. That process hasn't produced many of the results anticipated since a large newly created jurisdiction, Damascus, lacked the infrastructure for development and many local citizens have resisted urbanization.

Part of the failure of Metro's expansion in the Damascus area of Clackamas County can also be blamed on the weak housing demand in Damascus. State rules governing UGB expansion call for UGBs to be expanded in places of low agricultural productivity, protecting land with high agricultural potential. The highest valued farmland in the exurban areas of Portland tends to be located in Washington County, where land is more flat, well drained, has good highway access, and has a better climate than the eastside. Unfortunately, housing development is also more

attractive in places with flat land, well--drained soils, better highway access, and milder climates (along with good school quality and employment access). In effect, state land use rules that force UGB expansion in low--value agricultural land in the eastside has meant that the region has received relatively little housing production per acre when expanding the UGB.

Frustration with the UGB expansion process and with legal challenges by environmental interests to UGB expansion led the Oregon State Legislature to decide in March, 2014, to expand the UGB in the Portland and Salem metropolitan areas by statute. While the legislative decision largely validated administrative decisions that Metro had already made, it questions whether the focus for land use decision--making is moving from Metro headquarters to the state legislature in Salem.

Metro's Urban Growth Report and the Impact on Housing Costs

In recent UGB decisions, Metro has used a spatial planning model known as Metroscope, which assigns population and employment to parcels in the region. Although the description of the Metroscope model uses the words "demand" and "supply", it's important to recognize that Metroscope is not an economic forecasting model that tries to understand the decision by firms and households to locate inside or outside the region or understand what type of housing they want. Rather, Metroscope is a population and employment assignment model that treats the

region's urban growth boundary as paramount. Within the model, households and firms must locate within the UGB should any zoning capacity exist, even if that capacity can only be utilized at very high cost. Moreover, residential zoning within the City of Portland is relatively generous, whether measured as height limits or as floor area ratio. However, much of that generously zoned land is already developed and will be unlikely to develop to its full extent in any conceivable time horizon.

Nevertheless, given the programming of the MetroScope model, the zoning capacity within the City of Portland acts as a sponge to soak up any potential housing demand.

The impact of the excessive zoning for multi-family in the City of Portland can be seen in the following table showing the percentage of single-family housing and multi-family housing in the Portland region over the last 55 years compared to the projected 20 years in the Metro plan. Historically, the Portland region's housing stock has comprised of about two-third single-family homes and one-third multi-family housing. As land has become more expensive, multi-family housing has become more popular, but we still produce about 60% single-family housing and 40% multi-family housing. In the Urban Growth Report, Metro staff have become fixated on the last five years of building permit data, when the national economy was in crisis, home values deteriorated, consumers lost confidence in homeownership, and the federal government was the dominant supplier of credit, largely for multi-family housing. Using a limited amount of data, they have produced an unbelievable housing production forecast.

Single-Family vs. Multi-Family Housing

Tri-County Region

Census Year	Single Family	Multi Family
1960	85%	15%
1970	76%	24%
1980	81%	19%
1990	80%	20%
2000	74%	26%
2010	70%	30%

Units Built 1960-2010

60%	40%
36%	64%

Metro Plan, 2015-35

Source: Metro staff, Metro Urban Growth Report

To achieve that level of multi-family development inside the urban growth boundary, Metro projects that 96,911 of the 205,780 housing units produced in the next 20 years (47.1%) will be built at a density level of 46 units per acre or greater. 37.9% of the units produced will be built at the Pearl District density level of 101 units per acre or higher. By comparison, mostly single-family neighborhoods in East Portland were developed at 8 units per acre. In addition, a staggering 77% of the housing capacity of the region is estimated to come from redeveloped property or neighborhood infill, which means that for most housing projects built, some existing housing or business will need to be demolished. The City already faces considerable neighborhood discontent from apartment construction and the loss of on-street

parking, adding to the doubts that this level of density will materialize. In the Report, Metro assumed that 60.2% of future housing unit production will happen in the City of Portland, 92% of which is multi-family construction, a complete reversal of historic trends. However, in the Metroscope model, housing preferences play no role, only zoning capacity.

While the Metroscope model provides an unrealistic model of existing housing capacity, it does provide us a measure of the costs and tradeoffs. One of the refinements of the Metroscope model in recent years recognized that increasing housing density requires higher apartment rents. Under current market conditions, for example, development of garden apartments (two-story structures with surface parking) require apartment rents of at least \$1.00--\$1.20 per square foot. Mid-rise apartment construction (five story buildings with structured parking) require rents in the \$1.70--\$2.10 per square foot range. And high-rise construction (greater than 5 stories, often requiring steel construction and underground parking) require rents in the \$2.70--\$2.90 per square foot range. As a general rule, these higher density developments tend to occur in the central neighborhoods of the City of Portland, where rents tend to be highest.

As a result, when the Metroscope model looks for additional housing capacity, it must hit considerably higher rents in order to fit the 20-years of population growth inside the existing UGB. In addition, Metroscope treats single-family homes and apartments as perfect substitutes for another, regardless of household preferences.

As a result, when the model has to accommodate a new household that would normally prefer a single-family home, it scours the region to find one. When it cannot, it assigns that household to a newly built multi-family structure. Much of the land zoned for multi-family is currently occupied by lower density structures, so the multi-family development requires some demolition and additional housing demand, which then needs to be accommodated by yet more high cost multi-family construction.

The amount of the increase in prices required by Metroscope to fit the growth in population inside the current UGB is staggering. Table 4 from Appendix 4 of the Urban Growth Report compares the inflation-adjusted prices in the baseline year (2015) with those in 2035. When you compare the projected prices by “value class” or household type, and add a 2-3% factor for inflation, you find that Metroscope is projecting a doubling of apartment rents and home prices in the region.

Table 4: Baseline - medium growth scenario

Residential Demand by Value Class										
5/19/2014										
MetroScope UGR Scenario #1462 Results										
2015										
UGB 2015										
Value Class	Total Residential Demand (units)				Residential Prices		Est. Monthly Rent			
	Owner Single Family	Owner Multi-family	Renter Single Family	Renter Multi-family	Owner Single Family	Owner Multi-family	Rental Single Family	Rental Multi-family		
1	32,134	3,981	2,304	17,174	\$ 85,062	\$ 82,228	\$ 594	\$ 341		
2	34,995	2,971	9,215	32,778	120,071	116,423	790	384		
3	41,831	3,116	6,715	28,651	146,220	146,930	969	449		
4	41,709	1,910	8,045	26,407	174,310	166,718	1,136	502		
5	45,403	2,308	5,827	21,694	211,744	203,193	1,314	570		
6	46,250	1,771	9,891	26,187	240,862	228,855	1,505	647		
7	43,644	1,112	10,938	24,263	308,826	278,718	1,814	763		
8	45,834	1,104	14,451	18,389	485,427	434,509	3,168	1,167		
	331,800	18,273	67,386	195,543						
	54%	3%	11%	32%						
2035										
UGB 2035										
Value Class	Total Residential Demand (units)				Residential Prices		Est. Monthly Rent			
	Owner Single Family	Owner Multi-family	Renter Single Family	Renter Multi-family	Owner Single Family	Owner Multi-family	Rental Single Family	Rental Multi-family		
1	36,699	14,726	2,454	27,487	\$ 126,987	\$ 105,755	\$ 764	\$ 467		
2	44,988	15,488	8,464	40,720	182,219	162,159	956	522		
3	46,189	11,101	5,430	36,715	225,363	210,320	1,113	591		
4	55,806	10,406	7,340	37,894	268,789	245,241	1,338	678		
5	53,118	8,079	7,735	34,186	321,264	297,240	1,587	774		
6	59,070	6,749	9,220	32,249	368,411	344,918	1,892	895		
7	53,702	3,203	10,059	29,589	454,937	429,537	2,309	1,065		
8	59,853	3,940	16,393	31,048	734,872	699,781	4,091	1,636		
	409,425	73,692	67,095	269,888						
	50%	9%	8%	33%						

Note: "value class" refers to the aggregation of household characteristics attributed by household size, income, and age of householder (i.e., HIA) into eight household types as shown in Table 4.

For example, if we look at household type 5, we find the estimated monthly rent rises from \$570 to \$774 per month in inflation-adjusted terms. If we add an inflation factor of 2.5% per year, the rent level will more than double from \$570 to \$1,268.

Averaged across the eight household types, we find average rents rising by 124%.

Home Prices and Rents

Household Group	Apartment Rent				
	2015	2035 (\$2015)	2035	Real increase	Nominal increase
1	\$341	\$467	\$765	37%	124%
2	\$384	\$522	\$855	36%	123%
3	\$449	\$591	\$968	32%	116%
4	\$502	\$678	\$1,111	35%	121%
5	\$570	\$774	\$1,268	36%	123%
6	\$647	\$895	\$1,467	38%	127%
7	\$763	\$1,065	\$1,745	40%	129%
8	\$1,167	\$1,636	\$2,681	40%	130%
				37%	124%

Household Group	Single Family House Price				
	2015	2035 (\$2015)	2035	Real increase	Nominal increase
1	\$85,062	\$126,987	\$208,083	49%	145%
2	\$120,071	\$182,219	\$298,587	52%	149%
3	\$146,220	\$225,363	\$369,284	54%	153%
4	\$174,310	\$268,789	\$440,442	54%	153%
5	\$211,744	\$321,264	\$526,428	52%	149%
6	\$240,862	\$368,411	\$603,684	53%	151%
7	\$308,826	\$454,937	\$745,467	47%	141%
8	\$485,427	\$734,872	\$1,204,173	51%	148%
				52%	148%

Source: Metro, author's calculations

On the homeownership side, the price increase required in the Metro Urban Growth Report is even more dramatic, with housing prices growing by a factor of 148% over the 20--year planning horizon.

The PSU Center for Real Estate finds the median

house price in the region at \$290,000 in the third quarter of 2014. An increase of 148% over 20 years would mean a median house price of \$719,000 in 2035.

What would be the impact of this level of housing price and rent appreciation? To assess this, I've created a table of median apartment rents by metropolitan area for the largest 20 metropolitan areas, including a few additional west coast competitors. Rents vary across metropolitan areas for a variety of factors, including total population, employment opportunities, land availability, and amenities within that region.

Median gross rent by Metropolitan area

2009		2035 (projected)	
San Francisco	\$1,303	San Francisco	\$2,476
Washington	\$1,303	Washington	\$2,476
San Diego	\$1,224	San Diego	\$2,326
Los Angeles	\$1,197	Portland	\$2,281
New York	\$1,125	Los Angeles	\$2,275
Boston	\$1,123	New York	\$2,138
Miami	\$1,077	Boston	\$2,134
Seattle	\$1,015	Miami	\$2,047
Sacramento	\$998	Seattle	\$1,929
Atlanta	\$912	Sacramento	\$1,896
Philadelphia	\$912	Atlanta	\$1,733
Phoenix	\$912	Philadelphia	\$1,733
Chicago	\$900	Phoenix	\$1,733
Denver	\$876	Chicago	\$1,710
Portland	\$876	Denver	\$1,665
Houston	\$848	Houston	\$1,611
Dallas	\$846	Dallas	\$1,608
Minneapolis	\$840	Minneapolis	\$1,596
Salt Lake City	\$835	Salt Lake City	\$1,587
Detroit	\$783	Detroit	\$1,488
St. Louis	\$732	St. Louis	\$1,391
Cleveland	\$695	Cleveland	\$1,321

2009 American Community Survey, US Census Bureau, author's calculations

In 2009, Portland fits in the middle of the pack among competing Western metro areas like Denver and Phoenix, and national competitors like Dallas, Minneapolis, and Chicago. Firms considering relocation from the Bay Area or Seattle can suggest to their employees that they will pay lower housing costs. To simulate the situation

in 2035, we increase the rents in all metropolitan areas by 2.5% per year, roughly equal to the rate of inflation in the last two decades. If rents were to rise by 37% in inflation-adjusted terms, the median Portland area rent would rise to \$2,281, roughly equal to levels in Los Angeles, San Diego, or San Francisco, eroding an important comparative advantage for the region. Yet nothing in Metro's planning effort accounts for the impact of these cost increases on the region's economic competitiveness. That is, MetroScope records the price levels required for development to match the density levels anticipated in the plan, but does not consider the competitive implications of such a price shift.

Metro's Urban Growth Report and Income Inequality.

Metro's Report attempts to reconcile these cost increases with housing choices and income inequality. In terms of the housing choice between single-family and multi-family housing, Metro anticipates that 63% of the increase in housing demand in 2015-35 will come in the form of multi-family housing and 37% from single family housing. That split is a complete reversal of the traditional 40%-60% split that the region has experienced. And to reconcile the shift from single family to multi-family with underlying preferences for ownership housing, Metro forecasts a tripling of condominium ownership from 3% to 9% of the housing stock. Both of these shifts in housing type suggest a decline in average housing unit size since multi-family housing tends to be considerably smaller than single family housing, making the region's housing stock less family-friendly. In other words, Metro is forecasting a

large increase in housing prices and an unprecedented decrease in housing unit size and quality.

In terms of income inequality, the large projected increases in housing costs work greatly to the disadvantage of low-income households. Housing expenditures as a percentage of income tend to decline with income. A household in the lowest 10% of incomes spends an average of 50% of their income in housing, whereas a household in the highest 10% of income spends about 10% of their income in housing. As a result, any policy that increases housing prices will be regressive and exacerbate income inequality in the region. While some local homeowners may enjoy the increase in the value of their property, higher income households own more property and will receive proportionately greater wealth gains. Moreover, existing homeowners cannot enjoy the benefits of that increase until they leave the region, and young homeowners will face a high cost for entering the housing market.

The authors of Metro's Urban Growth Report discuss the question of housing burdens and inequality in Appendix 12. However much of the analysis on Appendix 12 is inconsistent with other parts of the Urban Growth Report. Whereas in Appendix 4, the table presented above clearly shows that inflation adjusted rents rise by 37% and home prices by 52%, Tables 1 and 2 of Appendix 12 suggest that overall housing costs will fall from 2010 to 2035 by 8.5% (\$21,200 to \$19,400 per year) and apartment rents will rise by only 5.4% (\$9,200 to \$9,700 per year).

Table 1: Housing and transportation costs for all households in UGB (2010\$)

Year	Median income	Average housing expenditure	Average transportation expenditure
2010	\$70,800	\$21,200	\$6,400
2035 low growth scenario	\$69,500	\$18,900	\$5,200
2035 medium growth scenario	\$69,400	\$19,400	\$5,200
2035 high growth scenario	\$69,200	\$20,100	\$5,200

Table 2: Housing and transportation costs for renter households in UGB (2010\$)

Year	Median income	Average housing expenditure	Average transportation expenditure
2010	\$39,300	\$9,200	\$4,700
2035 low growth scenario	\$40,400	\$9,500	\$3,600
2035 medium growth scenario	\$40,300	\$9,700	\$3,600
2035 high growth scenario	\$40,100	\$10,000	\$3,600

In attempting to reconcile these numbers, Metro officials point to the unprecedented decline in prices following the housing bust of 2007---2011 and they cite, “The large shift from more expensive single family housing units to cheaper multi---family units.” The first argument doesn’t make sense since housing prices are actually higher today than in 2010. In fact, the latest numbers from the Case---Shiller housing price index show that the Portland single---family housing market has returned to the go---go days of the last decade. We need the regional government to add to land supply to meet that demand, rather than come up with numbers to make us feel good about the escalating costs. On the second point, Metro officials return to the refrain that citizens should adjust to the rise in prices by consuming smaller, lower---quality units.

Portland Metropolitan Home Prices

August Case---Shiller Index Value

2001	108.8	5.4%
2002	112.9	3.8%
2003	121.7	7.7%
2004	130.9	7.6%
2005	155.0	18.5%
2006	181.0	16.8%
2007	186.0	2.8%
2008	171.9	-7.6%
2009	150.5	-12.5%
2010	147.0	-2.3%
2011	135.9	-7.6%
2012	140.8	3.6%
2013	159.1	13.0%
2014	170.7	7.2%

Source: Standard and Poor's

In fact, the authors of Appendix 12 appear to dismiss the possibility that high housing costs could ever become a burden for young homeowners.

“Defining cost--burden for homeowners is somewhat more difficult than rents since many homeowners regard their homes as not just a residence but as an investment. Homeowners often spend a substantial burden of their income on their home, but do not necessarily regard these expenditures as a burden. This is particularly the case for affluent homeowners. For these reasons, this analysis assumes that to be cost--burden, a household must rent, not own.”

Unfortunately, this analysis ignores that not every household starts the 2015--35 planning process as a homeowner. High housing costs force households to remain renters living in small apartments or force them to choose small condominiums rather than the single--family homes they would prefer.

Metro's Urban Growth Report and Unfunded Local Government Mandates

There are two features of Metro's Urban Growth Report that assume large local government subsidies for transportation and housing development. The transportation subsidies appear within Appendix 12 of the Urban Growth Report, which was ostensibly written to show the burden of the Urban Growth Report on income inequality.

In this Appendix, Metro has chosen to analyze renter household cost burdens that combine housing and transportation costs as a single amount. Traditionally, housing expenditures above 30% of income are seen as a cost burden. In Metro's analysis, the combination of housing and transportation expenditure can rise to 45% of income before they become a burden. Using the above table, we find that Metro expects the average household inflation--adjusted transportation costs would fall by 18.8% (\$6,400 to \$5,200) and the average renter household transportation budget would fall by 23.4% (\$4,700 to \$3,600). What accounts for this dramatic reduction in travel costs? According to the Report, "...Census data point to an increase in the non--auto mode share, which reduces transportation costs, particularly for households with lower incomes residing in apartments. This influences the forecast."

The assumption that we will make large swings in transportation mode share has no basis in fact. Over the last two decades, the mode choice of commuters in the

Portland metropolitan area has been remarkably stable, despite significant increases in investment in public transportation. Roughly 80% of Portland metro area workers commute by automobile, mostly on their own, but some in carpools. Transit use has remained steady at about 6% of the workforce. While transit use is cheaper than automobile use, most commuters prefer automobiles over mass transit because transit takes longer or cannot serve the journey they need to make. While they might save money by using transit, they decide to drive to save time and improve their wellbeing.

Transportation Mode, Journey to Work

Portland Metropolitan area

	1990	2009
Automobile, drive along	72.6%	71.6%
Automobile, carpool	12.5%	9.9%
Public transit	6.0%	6.1%
Walk	na	3.2%
Other	8.9%	3.1%
Work at Home	na	6.1%

Source: US Census

Nevertheless, Metro has stated that transportation costs will fall by 18.8% primarily due to the switch from automobile use to non--auto mode shares. What are we to make of this assumption? First, the shift to non--auto modes will greatly increase commuting times, which is a burden to residents. The typical transit commute in the United States takes 47.8 minutes while the typical auto commute takes between

23.9 and 25.2 minutes depending upon whether the person drives alone or carpools.

Second, the shift to non-automobile shares will create a large burden to Tri-Met and local taxpayers.

Transit operations are subsidized by local taxes, and the construction of new transit lines requires substantial local and federal subsidies.

Metro's Urban Growth Report doesn't quantify the degree of shift from automobile to non-auto share, but it can be estimated using this formula:

$$TAC = AC \times AS + NAC \times (1-AS)$$

Where TAC equals Total Average Cost, AC equals Auto Cost, AS equals Auto Share, and NAC equals Non-Auto Cost. As an example, we can assign zero cost to the non-auto share (i.e., free transit) and use the 2009 percentages of 81.5% auto and 18.5% non-auto, and solve for an auto share that reduces total travel cost by 18.8%:

$$TAC = AC \times 0.815 + 0 \times 0.185$$

$$AC = TAC/0.815 = 1.227 TAC$$

$$(0.812) TAC = 1.227 TAC \times AS + 0 \times (1-AS) \quad AS=0.662$$

Hence, the level of automobile driving would need to fall from the current level of 81.5% to 66.2% of commuters. By comparison, the percentage of commuters who drive in the metropolitan areas of Philadelphia (83.6%), Washington, DC (83.2%), Boston (82.7%), San Francisco (81.0%), and Chicago (81.6%) are much higher. Only the New York metropolitan area has a lower rate of automobile usage at 65.7%. Of course, our region has nothing like the transportation or land use characteristics of these older metropolitan areas that support the higher level of transit use.

To achieve even a modest shift in commuting mode would require enormous subsidies to develop the subway and bus transit lines in those older cities. We know from past experience that the region has spent over \$500 million in local tax dollars and over \$1 billion in federal tax dollars building new mass transit lines, with very little impact on mode share. And operating the new transit lines would require significant tax increases (or significant fare increases). At present, Tri--Met's transit riders pay 25% of operating costs, with the payroll tax paying the remaining 75%.

Therefore under current policies, doubling or tripling our transit ridership would require doubling or tripling the region's payroll tax.

The second major unfunded mandate in Metro's Urban Growth Report comes from assumed subsidies to develop high--density housing projects. In Appendix 11 of the Urban Growth Report, Metro measures the level of subsidies needed to create housing projects in various urban renewal areas and neighborhoods in Multnomah County, Clackamas County, and Washington County. The developer incentives vary from \$10,000 per unit to \$50,000 per unit, depending upon the location. In part they recognize some of the cost barriers to high--density development outlined earlier in this article.

The amount of housing subsidy expected as part of Metro's program is staggering, almost \$3 billion of developer incentives. While the Report says that these subsidies are, "based upon existing programs", none of these programs are currently

producing housing on this scale. Moreover, nothing in the Urban Growth Report suggests

Table 5: Areas with modeled assumptions for residential incentive programs

City of Portland	Type	Incentive per DU	SF DU	MF DU	Total DU
Central Eastside	Central City	\$50,000	0	1,196	1,196
Downtown Waterfront	Central City	\$50,000	0	3,376	3,376
North Macadam	Central City	\$50,000	0	10,574	10,574
Oregon Convention Center	Central City	\$50,000	0	7,105	7,105
River District	Central City	\$50,000	0	5,336	5,336
South Park Blocks	Central City	\$50,000	0	787	787
Gateway Regional Center	Regional Center	\$25,000	0	4,233	4,233
Lents Town Center	Town Center	\$10,000	682	17,209	17,891
Education URA (PSU)	Non-Center URA	\$10,000	0	831	831
Interstate Corridor	Non-Center URA	\$50,000	194	19,036	19,230
NPI - 42nd Avenue	NPI	\$10,000	14	813	827
NPI - 82nd Avenue and Division	NPI	\$10,000	38	2,690	2,728
NPI - Cully Blvd	NPI	\$10,000	4	1,960	1,964
NPI - Division Midway	NPI	\$10,000	0	507	507
NPI - Parkrose	NPI	\$10,000	2	339	341
NPI - Rosewood	NPI	\$10,000	61	248	309
TOD - E 122nd Ave MAX Station	Portland TOD	\$10,000	6	84	90
TOD - E 148th Ave MAX Station	Portland TOD	\$10,000	128	1,001	1,129
TOD - E 162nd Ave MAX Station	Portland TOD	\$10,000	4	54	58
TOD - NE 60th Ave MAX Station	Portland TOD	\$10,000	1	308	309
TOD - NE 82nd Ave MAX Station	Portland TOD	\$10,000	2	1,851	1,853
TOD - SE Division St	Portland TOD	\$10,000	1	978	979
Rest of UGB	Type	Incentive per DU	SF DU	MF DU	Total DU
Clackamas	Regional Center	\$25,000	0	248	248
Gresham	Regional Center	\$25,000	14	365	379
Hillsboro	Regional Center	\$25,000	238	408	646
Oregon City	Regional Center	\$25,000	0	886	886
Tanasbourne/AmberGlen	Regional Center	\$25,000	8	1,553	1,561
Gladstone	Town Center	\$10,000	10	0	10
Lake Oswego	Town Center	\$10,000	3	33	36
Rockwood	Town Center	\$10,000	0	1,135	1,135
Tigard	Town Center	\$10,000	67	337	404

where these subsidy dollars will come from. 92.4% of the subsidy dollars are identified within urban renewal areas within the City of Portland. In theory, urban renewal dollars are generated by taxes on increases in assessed value within urban renewal areas that public improvements have incentivized. In practice, most property within the Portland metropolitan area is assessed at substantially below its real market value. Because properties are assessed below market prices, assessed values will increase by 3% per year (the maximum allowed by state statute) regardless of any urban renewal investment. And since those increases would likely occur independently of investments in urban renewal spending, a large fraction of those subsidy dollars will come at the expense of other county and city government functions.

Subsidized Housing Costs by District

	Subsidy per unit	Units	Total Subsidy
Central Eastside	\$50,000	1,196	\$59,800,000
Downtown Waterfront	\$50,000	3,376	\$168,800,000
North Macadam	\$50,000	10,574	\$528,700,000
Oregon Convention Center	\$50,000	7,105	\$355,250,000
River District	\$50,000	5,336	\$266,800,000
South Park Blocks	\$50,000	787	\$39,350,000
Gateway Regional Center	\$25,000	4,233	\$105,825,000
Lents Town Center	\$10,000	17,891	\$178,910,000
Education URA	\$10,000	831	\$8,310,000
Interstate Corridor	\$50,000	19,230	\$961,500,000
Neighborhood Prosperity Initiative	\$10,000	6,676	\$66,760,000
Transit--Oriented Development	\$10,000	4,418	\$44,180,000
Clackamas	\$25,000	248	\$6,200,000
Gresham	\$25,000	379	\$9,475,000
Hillsboro	\$25,000	646	\$16,150,000
Oregon City	\$25,000	886	\$22,150,000
Tanasbourne/Amber Glen	\$25,000	1,561	\$39,025,000
Gladstone	\$10,000	10	\$100,000
Lake Oswego	\$10,000	36	\$360,000
Rockwood	\$10,000	1,135	\$11,350,000
Tigard	\$10,000	404	\$4,040,000
			\$2,893,035,000

Metro's Urban Growth Report and the Impact on the Environment

Oregon's system of land use planning and its urban growth boundaries were established on a model of environmental protection. Resource lands for agriculture and forestry were seen as vulnerable to urban development. Every urbanized area within the state was required to establish an urban growth boundary, and property

subdivision and housing production in rural areas was greatly constrained. As the urban economy within the state has expanded, the system of UGBs has created substantial differentials in land prices inside the UGB and outside the UGB, perhaps on a factor of 10. In more recent years, the justification for the land use planning system has morphed to include the idea of reduced public infrastructure costs, the value of open space, and the benefits to global warming from more compact development.

In 2009, the state legislature commissioned Metro to conduct a “Climate Smart Communities Scenario Project” to explore ways to reduce carbon emissions in the region. Unfortunately, rather than taking a direct approach to the problem of carbon emission, such as a carbon tax, Metro has proposed indirect approach, which coincides with many of the policy assumptions in the 2014 Draft Urban Growth Report, including encouraging higher density compact development, promoting mass transit, and encouraging mixed-use development. A Metro Council decision on the Climate Smart Communities Scenario Project will occur two weeks after the Metro Council decision on the Urban Growth Report, so that impact of the Urban Growth Report on climate change should be assessed carefully.

What should be clear from the above discussion about the changes in transportation behavior and mode share in the Urban Growth Report is that Metro’s statements about outcomes in 2035 are largely aspirational, rather than a forecast or a financial plan. The Climate Smart Communities Scenario Project discusses in more detail

some plans to achieve the transportation behavior changes, but most of the tools discussed are largely more intensive versions of existing policy: increasing funding of mass transit, support for more dense urban development, better bike paths and sidewalks, development of safer streets and highways, etc. Nothing in this plan or in Metro's Urban Growth Report point to the Portland region attaining the non--- automobile commuting share of the New York metropolitan region. This suggests that there is no justification for the transportation cost benefits promised in the Draft Urban Growth Report.

What is certain about Metro's Urban Growth Report is that real estate development will become more difficult and housing costs in the region will rise. And we can be certain that this will lead economic growth to move outside the region.

In a recent study of carbon emissions across US metropolitan areas, Harvard economist Edward Glaeser and UCLA economist Matthew Kahn found that carbon emissions tend to be lower in cities rather than suburbs, lower in new houses compared to older homes, and in lower western states such as California and Oregon, compared to Southern states such as Texas and Georgia (where cooling costs are high) or Northern states such as Illinois or Pennsylvania (where heating costs are high). After factoring in the source of fuel in each region and an estimated \$43 of damage for each ton carbon emitted, they came up with the following estimate of the carbon emission cost per household. The table has been edited to emphasize larger metro areas and Western metro areas.

Annual Carbon Emissions Cost Per Household by Metro Area

Metropolitan area	Average New House	Average House	Average/ New Difference	City/ Suburban Difference
Los Angeles	\$840	\$1,188	\$348	-\$45
San Diego	\$844	\$1,148	\$304	na
San Francisco	\$858	\$1,152	\$294	\$173
Sacramento	\$913	\$1,237	\$324	\$85
Phoenix	\$983	\$1,307	\$324	\$84
Denver	\$1,037	\$1,336	\$299	na
Portland	\$1,044	\$1,347	\$303	\$128
New York	\$1,062	\$1,379	\$317	\$289
Salt Lake City	\$1,100	\$1,406	\$306	na
Boston	\$1,123	\$1,253	\$130	\$256
Seattle	\$1,177	\$1,477	\$300	\$105
Miami	\$1,203	\$1,768	\$565	na
Chicago	\$1,243	\$1,781	\$538	na
Minneapolis	\$1,264	\$1,866	\$602	\$171
St. Louis	\$1,282	\$1,737	\$455	\$92
Cleveland	\$1,309	\$1,633	\$324	\$111
Detroit	\$1,313	\$1,862	\$549	-\$77
Washington	\$1,319	\$1,832	\$513	\$195
Atlanta	\$1,338	\$1,866	\$528	\$258
Philadelphia	\$1,357	\$1,698	\$341	\$222
Dallas	\$1,375	\$1,926	\$551	\$133
Houston	\$1,394	\$1,932	\$538	\$164

Source: Glaeser and Kahn (2008)

As the table shows, households in Portland emit relatively little carbon compared to most metropolitan areas, largely due to our relatively mild climate and the high percentage of hydropower used to generate electricity. Cities in California and the

western United States also tend to have milder climates and use more hydro and less coal than other states. Cities in the South and the Midwest tend to have much higher carbon emissions. Also, new homes tend to have fewer emissions, as they tend to be more energy efficient, offsetting the additional driving typically associated with living in a new home, which is shown in column 3. Glaeser and Kahn have also estimated the differences in carbon emission between a typical household in the central city vs. its suburb for most of the metro areas. As a general pattern, city residents emit less carbon due to their smaller houses and greater use of mass transit. However, that differential is generally smaller than the difference between new and existing homes and between homes in different regions.

Given these patterns, we ought to be encouraging new housing development, particularly in Portland and other cities in the western United States as part of a strategy to reduce carbon emissions. Unfortunately, our policies against new development are raising housing prices and steering population growth in the Southeastern and Southwestern United States, where carbon emissions are much higher.

Metro's Urban Growth Report and Economic Development

This review has focused on the impact of Metro's policies on housing costs. We have found that the Urban Growth Report favors higher density housing development that can only be supported by significantly higher rents and housing prices. While local residents will suffer those burdens in the short run, long run impacts of

housing appreciation not warranted by amenity increases will result in less investment and employment in the region. In an amenity-rich region, firms may reduce wages knowing that prospective employees will receive a “second paycheck” in the form of milder climate, better schools, and greater entertainment options. The idea of an amenity advantage has been a big driver in the economic development of the Sunbelt states, as employers are able to experience a lower labor cost structure.

Unfortunately, the housing appreciation anticipated in the Urban Growth Report exceeds any range of possible increase in amenities, causing potential employees to seek wage premiums to move to such a location. This pattern of barriers to development in high amenity areas has steered development to regions in the country more amenable to development. As Edward Glaeser writes regarding growth controls in California:

“While limits on California’s growth may make that state seem greener, they’re making the country as a whole browner and increasing carbon emissions worldwide. Houston’s developers should thank California’s anti-growth movement. If they hadn’t stopped building in Coastal California, where incomes are high and the climate is sublime, then there wouldn’t have been nearly as much demand for living in the less pleasant parts of the Sunbelt.”

Thus, the challenge of global warming is to remember that citizens have choices. If we make paradise unaffordable, people will live elsewhere.

The bias in Metro’s Urban Growth Report also extends to commercial and industrial development, which has not been a focus of this review. For example, in the acreage assigned for industrial development, Metro has included acres of land that have

been assessed as brownfields, substantial acreage on West Hayden Island, and several golf courses near the Portland Airport. In each of these cases, there is a low chance of development happening in the next 20 years. No funding mechanism for widespread remediation of brownfields exists that supports this assumption. Or put differently, brownfields will only redevelop when property demand is very high to support that development. On West Hayden Island, the City of Portland's Planning and Sustainability Commission adopted an annexation plan that required extension mitigation costs on development, leading the Port of Portland to abandon plans to develop that site. And no one anticipates member-owned golf courses being converted into industrial uses. The compensation cost to the membership would exhaust the value of any potential demand by industrial users. Nevertheless, the assumption that these lands are available for industrial use was kept in the Urban Growth Report, largely to prevent a need to expand the urban growth boundary.

Rethinking Land Use Planning Politics

This review has questioned many of the assumptions behind Metro's Urban Growth Report and suggests that it will harm the economic vitality of the region and further skew economic benefits from low-income households to high-income households. Metro has developed a plan that increases housing costs, increases commute times, and reduces employment opportunities. The Urban Growth Report isn't internally consistent, and its policy effect will prevent land from being utilized for vital human needs.

What is the alternative? How should we plan for future growth in the region? Those are broad questions, but here are some ideas.

One possibility is that Metroscope needs to become an even more sophisticated regional planning model, so that changes in housing prices affect economic investment, employment, and population growth. Such a modeling effort would require a lot of time and investment, but it would recognize that we live in a region where urban planning can have significant feedback impacts on local economic activity. That might raise an issue of whether we want our region to grow or whether we want our children to move elsewhere, but at least the debate would be clear.

A second option might be to raise the importance of housing costs and human habitat to the level being placed by farmland preservation and a tight urban growth boundary in our regional decision-making. The current formulation has a baseline assumption of a fixed urban growth boundary. The Urban Growth Report tests whether future population growth can fit into that boundary, even with highly unrealistic housing cost impacts. An alternative might be to accept a certain level of housing price appreciation, perhaps a 5% growth after inflation over 20 years, and then find a combination of higher density development and urban growth boundary expansion that fits into that housing cost assumption. Currently, we pay only lip service to housing affordability.

Third, we might increase the priority placed to local housing prices and land prices, which act as a signal to where people want to live. Land prices on the western and southern edge of the metro area tend to be much higher inside the urban growth boundary than outside. That differential represents an increase in welfare that would come from expanding the boundary in those locations. As we expand on the west side, we could target expansions to avoid particularly high valued forests and farmland, such as the wineries of Yamhill County. Unfortunately, the current system focuses expansion on places on the east side of the region, which is the least attractive to housing consumers. In fact, much of the land in the Damascus area could be taken out of the UGB and replaced by land elsewhere at enormous benefit to the public. Using prices as a guide, UGB expansions could be determined in a decentralized way by underlying consumer choice, rather than in a regional planning model or by log-rolling politics.

Finally, our planning system needs to address the problems of road construction and infrastructure development seriously, rather than assume a wholesale shift to non-automobile commuting. While visitors marvel at the light rail construction in our region, that experiment has failed to change the percentage of transit commuters and our highways are as congested as ever. We obviously need smarter highways to smooth out demand between rush hour and off-peak driving and give more incentives to choose alternatives. Tools like congestion pricing can be used to selectively add capacity, as our leaders were prepared to do with the Columbia

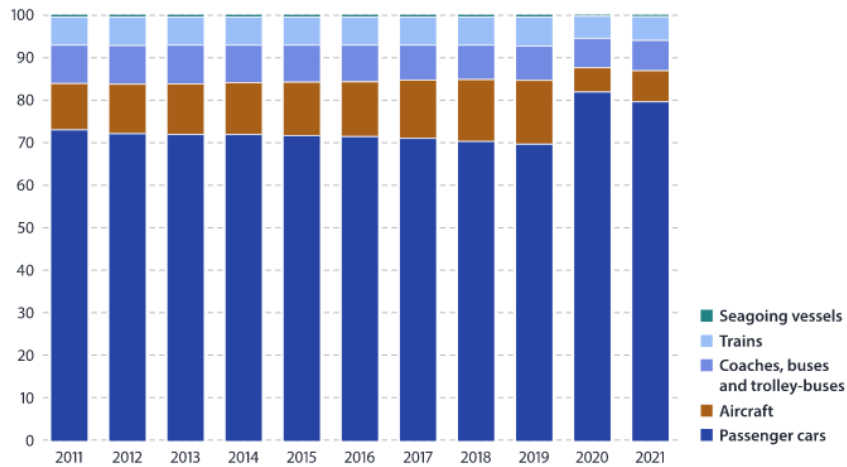
River Crossing, and create incentives for alternative modes. And we will benefit from a new generation of cleaner cars, so that the impact of accommodating the public's preference for driving themselves doesn't have to come at a cost to air quality. However, we shouldn't base our land use planning decisions on commuting assumptions that won't happen.

The Metro Council may adopt the draft Urban Growth Report in December, despite the criticisms presented here. However, it's also possible that the state legislature, less beholden to the special interests at Metro headquarters, will repeat the grand bargain of last March and perform another end--run around the Metro decision-- making process. It's important for legislators in other parts of the state to recognize that economic development is not a zero--sum game. Economic growth in Portland brings trade and investment across the entire state and region, represented by suppliers of building materials, Willamette Valley farms, Oregon coast fisheries, or tourist destinations in the Cascades or Eastern Oregon. Whether Oregon can escape the California disease of anti--growth policies should be of concern to everyone.

APPENDIX C

Development of modal split of passenger transport

(% based on passenger-kilometres, EU, 2011–2021)

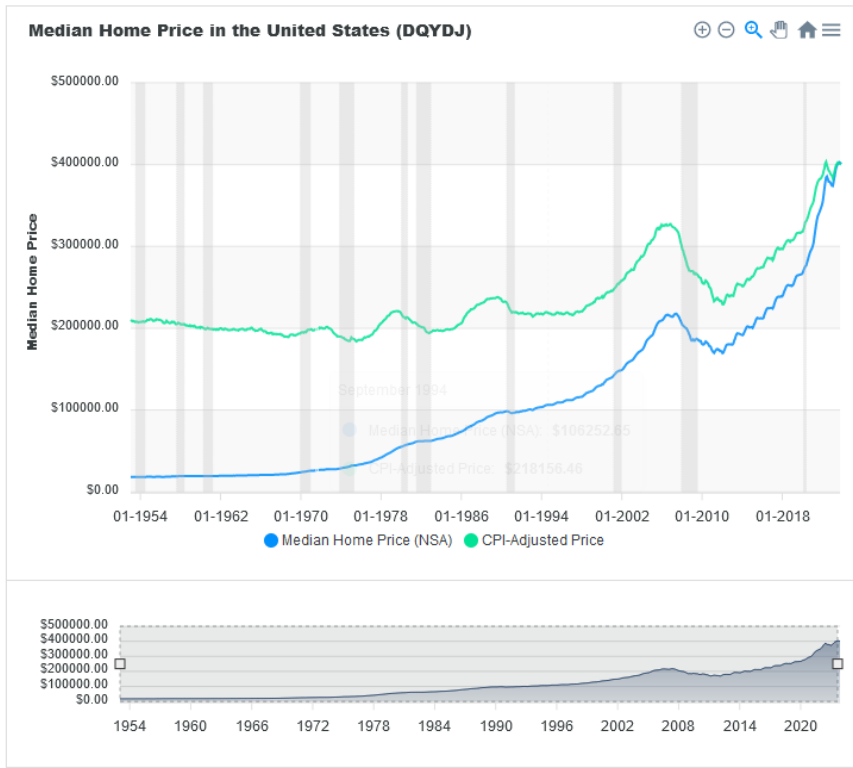


Source: Eurostat (online data code: [tran_hv_ms_psmo](#))

Eurostat, 2023, Key Figures in European Transportation.
<https://ec.europa.eu/eurostat/documents/15216629/18384997/KS-HE-23-001-EN-N.pdf/65eb90bc-4856-f6a5-b12f-cf87854587f7?version=4.0&t=1707145038133>

APPENDIX D

Historical Median Home Value



dqydj.com 2024, Historical US Home Prices: Monthly Median from 1953-2024,

<https://dqydj.com/historical-home-prices/>

APPENDIX E

Selected Case-Schiller Indexes 2022-23¹			
City	Median House Price	Median Income	Case Schiller Value
Vancouver, B.C.²	\$1,251,923	\$99,610	12.5
San Francisco, CA	\$1,348,00	\$136,890	9.8
Seattle, WA	\$879,900	\$116,068	7.5
Portland, OR	\$523,000	\$85,876	6.1
U.S. Average	\$402,000	\$74,580	5.4

Appendix E describes the selected Case Schiller indexes cities practicing urban containment and densification.

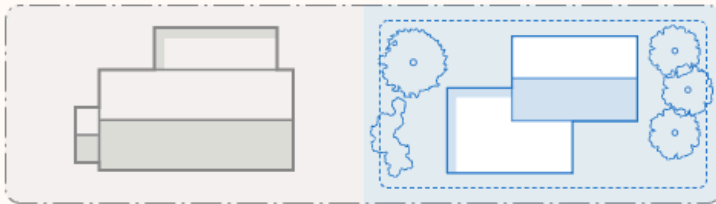
¹ For US Cities median income and median house price data <https://www.census.gov/quickfacts>; For Vancouver B.C.: Median house price: WOVA.com, <https://wowa.ca/vancouver-housing-market> , Median income: <https://www.welcomebc.ca/Choose-B-C/Why-Choose-British-Columbia-Canada/Income-and-Wages>

² Prices in Canadian Dollars. The Currency does not affect the Case-Schiller index.

APPENDIX F



\$1.2M – **\$405.3K** = **\$770.2K**
Today's List Price Profit From Lot Split Your New Price



TODAY

ADD A SINGLE
FAMILY HOUSE

ADD A DUPLEX

Join the waitlist →

Fong, J., 2022, Entrepreneurs and the Changing Political Economy of Housing, Market Urbanism, <https://marketurbanism.com/2022/04/06/entrepreneurs-and-the-changing-political-economy-of-housing/>

APPENDIX G



This aerial from suburban Dallas shows how the “Devil’s Density” is built out on the edge of the town at residential density that is not efficient with more compact development patterns.

Environmental Protection Agency, 2009, Essential Smart Growth Fixes for Urban and Suburban Codes, pg. 47, Chapter 11 “Avoid the Devil’s Density”,
<https://nepis.epa.gov/Exec/QueryNET.exe/P1008K3Q.txt?ZyActionD=ZyDocument&Client=EPA&Index=2006%20Thru%202010&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%5C06THRU10%5CTXT%5C00000021%5CP1008K3Q.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=2#>

APPENDIX H

Contiguous Rights

Andrew Thomas

Debates surrounding the rights of property owners to control land use on parcels or areas adjacent to their property have existed as long as common law has dealt with issues of real property. On one hand the law acknowledges some level of interest that a property owner has in what adjacent property owners can do with their property. It is accepted that a property owner can pursue a nuisance claim if an adjacent property owner does something that is noxious to the property owner's interest. For example, and the individual may sue a neighbor who starts a pig farm or runs a gravel-crushing operation late at night for nuisance.³ At the same time, the right of adjacent property owners to utilize their property in a way that might be disapproved of by their neighbors also exists. Additionally, there is a similar debate about community consensus in terms of the ability of a community to broadly dictate the use of land within that community even if the parcels regulated are not directly adjacent to those pursuing the regulation. More recently, there has been a focus on either the interests of a property owner or a community to abolish existing zoning standards, typically directed at single-family housing in favor of developing higher-density housing within a given area.⁴ This topic has invoked a variety of perspectives and is quite contentious. On one hand, purchased individuals claiming to advocate for affordable housing and free markets generally take the position that abolishing single-family zoning is a property right and that the market for housing will be more transparent if the form of housing is not dictated. On the other hand, individuals who purchased a house in a community with the assumption that certain standards will always be followed so long as all residents agree to them generally oppose abolishing single-family zoning.⁵ Additionally, arguments surrounding issues of financialization, home ownership, and preventing financial speculation also surround this issue. Although there is no one way of addressing this issue, it is useful to contemplate the continuum of potential regulations as well as policy consequences of various courses of action. Also, it is useful to formulate a framework for policymakers to consider these continuums in their deliberations about whether or not a certain policy should or should not be enacted.

³ *Copart Inds. v. Con Ed*, 41 N.Y.2d 564, 394 N.Y.S.2d 169, 362 N.E.2d 968 (1977).

⁴ <https://www.newgeography.com/content/007726-the-housing-plot>

⁵ <https://www.strongtowns.org/journal/2020/7/7/abolish-single-family-zoning>



It is difficult to deny the interest of a property owner in the adjacent parcels. <https://www.dailymail.co.uk/home/you/article-2551117/Pick-size-Why-elderly-lady-big-fighting-spirit-refused-sell-home-developers.html>

From this, we must question how we assess the right of a property owner to have influence over land use policies not involving their own property. Assuming no government regulation exists, covenants are an option.⁶ In the absence of any type of governmental regulation covenants and deed restrictions are a method of ensuring that a community maintains a certain character. Specifically, courts have consistently held that private covenants are valid so long as they touch and concern the land and they do not violate fundamental constitutional rights.⁷ Presumably, any individual who purchases a property in an area with covenants agrees to adhere to those covenants within some wide bound of reason. Additionally, some jurisdictions provide for what is known as citizen-initiated zoning we're citizens agree for certain zones to be enacted in certain areas that relate to either lot size or the character of structures built in that area.⁸

⁶ *Shelley v. Kraemer*, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1948).

⁷ *Buchanan v. Warley*, 245 U.S. 60, 38 S. Ct. 16, 62 L. Ed. 149 (1917).

⁸ <https://ravalli.us/179/Zoning#:~:text=The%20creation%20of%20a%20citizen-initiated%20zoning%20district%20%28CIZD%29,land%20use%20plan%20that%20can%20enhance%20their%20neighborhood.>



There is often a tension between community consensus and the desires of certain land-owners. <https://www.nzherald.co.nz/business/defiant-family-refuse-to-sell-50m-sydney-property-to-developers/QQ3EI6VQ2U5WFDYPZWQ5XBJ7RM/>

Public regulation of land use.

Aside from private regulatory structures, it is useful to contemplate the factors that go into either a legal determination that a certain use is conforming in an area or whether or not a regulation is applicable to a certain area or parcel.

Historical use

One factor to consider is historical use. If an area is developed in a way to allow for certain uses people will likely have purchased property in that area with the understanding that those uses are permissible. Additionally, infrastructure will have likely been developed in that area to accommodate a certain type of use. If conditions change or an alternate use is desired variances or modification of historical use may be contemplated at a point in time when that change is proposed.

Community preference

In line with historical use, another potential method of determining what type of use can occur in a certain area is community preference. Although community preference obviously has its limitations since no community has a monolithic view of how land should be utilized, if most individuals who live in an area have a preference for a use it should be considered as a factor in permitting or denying certain uses. When we look at the debates surrounding abolishing single-family zoning or upzoning certain areas or downzoning them, it is often the case that resistance to these changes is strongest from members of that existing community. As will be discussed later there should be limitations on the extent to which individuals can limit changes to adjacent

lands however it is also undeniable that the preferences of people who live in a certain area should have some bearing on land use decisions.



Historical use generally implies that members of a given community accept that an area will be used for a certain purpose.
<https://www.thechicagohomeseach.com/7-best-suburbs-chicago-il/>

The feasibility of continuing with the current use pattern or changing the use pattern

Although historical use and community preference are subjective factors that influence how land in a certain area, practical considerations dominate due to their tangible impact on both a given parcel and on a community. To create a system that balances the interest of individual property owners in having certain uses in an area against other interests in the community practical considerations such as the availability of land or the need to change uses must be explicitly considered in any approach that attempts to properly balance the interests of property owners in certain land use patterns.



Changing use most contemplate its effect on existing uses. <https://www.24hviralphotos.com/10-stubborn-homeowners-who-refused-to-relocate-their-homes-no-matter-what-10-pics/>

Analysis of buildable land

Invariably communities change and the pattern of land use within communities changes as well. For example, it is almost unfathomable for someone to advocate that Manhattan Island should be divided into small farms of 10 to 20 acres. However, when Manhattan Island was first settled by Europeans in the 17th century the landscape of Manhattan was comprised mostly of small farms consisting of orchards forests, and pastures. Obviously, as Manhattan grew in population and the use of the land evolved both in terms of population density as well as shifting from an agricultural community to one that was industrial and ultimately postindustrial land use patterns had to evolve to accommodate those natural pressures. Currently, the overwhelming majority of Manhattan Island is either high-rise or mid-rise buildings with the number of even single-family homes being a distinct minority of properties in Manhattan. Similar patterns of the evolution of land use exist in most major cities. For example, Los Angeles used to be similarly agrarian when first settled. However, if we look at the Los Angeles metropolitan area it is consistently developed into either high-density urban areas or high-density suburban areas with very little agriculture or open space. From this, the question arises:

How do we reconcile the pressure to grow and develop against the interests of a property owner to live in a community of a certain nature?

One method of doing this is to consider the availability of buildable land for a community to expand or accommodate new development. In both the instances of Manhattan Island and Los Angeles, the areas are consistently built up and the only way to accommodate new development

is to replace existing development with likely denser patterns of development. However, this limitation on buildable land is more of an exception than the rule. Most cities in North America have plenty of peripheral land on which to develop new structures. Even glancing at a satellite map, most European cities also have the ability to expand. The same applies to rural areas when we consider the overwhelming majority of land either in North America or Europe or throughout the world does not consist of built space. Thus, theoretically, if a community is resistant to densification or a new land use pattern other undeveloped areas of that community should be considered as an outlet for potential development if resistance to densification exists in certain areas. Also, from the perspective of infrastructure, it is likely more feasible to develop a new area than it is to redevelop an existing area since infrastructure costs often for higher-density areas are higher than the developments themselves. Thus, an analysis should be conducted of available or buildable land whenever contemplating whether it is necessary to change the land use pattern in an established area. This approach can serve to limit conflict and contention with regard to changing the use of established areas. Although a myriad of considerations such as open space or other infrastructure costs exist availability of buildable land is obviously a factor in considering whether it is necessary to force a use change in an existing area.



Invariably long-term changes to an area affect what land use patterns are considered acceptable. Manhattan Island in the 17th century consisted of mostly farms and open space.

http://www.vidiani.com/maps/maps_of_north_america/maps_of_usa/new_york_state/new_york/large_detailed_map_of_New_York_city_and_of_Manhattan_island_with_the_American_Defences_in_1776.jpg

The impact that new building patterns will have on existing landowners.

In addition to an analysis of buildable land, another consideration regarding changing use patterns is whether or not changes will have a material impact on existing landowners. For example, if you have a densely developed urban neighborhood of mostly single-family homes it is not a tremendous stretch to allow duplexes or triplexes to be built in that area. However, if a 1000-unit high-rise condominium was proposed for a rural area consisting of houses on acre lots and small farms the dis-congruence between the proposed development and the existing development pattern would be high. Having this standard allows for some degree of flexibility within the bounds of existing uses. Given the variability of land use, it is unreasonable to assume

that land use patterns will be strictly adhered to in a consistent way given any reasoned approach. However, it is also obvious that extremely discontinued uses should not be endorsed either.



Changes to land use patterns must contemplate their impact on existing owners. <https://www.pinterest.com/pin/763641680539060147/>

A variable property right exists in having land use maintained in a certain way around one's property

Given the premises above of private control, historical use community preference availability of land, and congruence of use it is next useful to consider what specific interest an individual has in land surrounding their parcel and how that interest may vary depending upon varied conditions. We can articulate that a variable property right exists in having land use maintained in a certain way around one's property. That property right varies depending upon how close an adjacent use is as well as the degree of effect the adjacent use has on the owned parcel.



The more extreme or pronounced the impact of an activity on an adjacent property owner the greater an interest that property owner has in the activity. <https://www.dailymail.co.uk/news/article-3290149/Compulsive-hoarder-rooms-streets-collecting-junk-pile-yard-cars-vacant-lot-nearby-neighbours-demand-local-council-takes-action.html>

The interest is highest in land that is immediately adjacent to the owner's parcel is highest.

The first factor to consider in the degree of interest an individual has in adjacent land use is the proximity of the use to the landowner's parcel. Specifically, uses that are immediately adjacent to a landowner's parcel are the most impactful to the landowners' interests. Uses that are further away are less impactful. For instance, an individual may own a property overlooking a mountain valley. Some distance down the valley there is a parcel that is to be developed with a new structure. The property owner's interest in how that new parcel is used is minimal at best since the parcel is far off in the distance. However, if the parcel immediately adjoined the property owner's land, then the interest would be substantially more. By having this variable interest, it prevents the expansionary interest of property owners who want to control entire regions to conform to their preferences. For example, states that have statewide planning regimes often have contentious battles where city dwellers in one part of the state attempt to legislate land use practices on another side of the state that is hundreds of miles away. Although the law in these states authorizes this type of interest to be expressed legitimately the interests of someone in determining the use of land that is nowhere near their holdings should be minimized.

Additionally, the standard alludes to the idea that land use is an inherently localized thing. It is not something that can be dictated from afar nor should it recognize interests from afar as having equal interest in the land as adjacent landowners.

Additionally, we can extend this logic to the interest of the property owner themselves in maintaining the use of their property in a certain way. Arguably, the interest of a property owner in their property is highest and it should be approached as such. Thus, proposed changes to zoning or some other characteristic of property that is held by an individual should be approached with the most skepticism. For example, if you have a neighborhood of mostly single-family homes and most people in the neighborhood desire to maintain the continued use of the neighborhood as being single-family homes then the interest of those landowners in their own

property should be given priority. This is opposed to the interest of a property owner in the land that they do not hold. An example of this might be a single-family neighborhood that abuts open space. The neighborhood might appreciate the field to walk in or the view that the field produces however they do not own it. If the owner of the property so desires to develop what say the field into more single-family homes, then again, the interest of that property owner should be given priority over the interests of the adjacent owners even though the adjacent owners should be contemplated in determining some extent of the land use of that property.



Although property owners might appreciate the view of adjacent open space their interest in the view is not as strong as the property owner's right to use the land for other purposes. https://elevation.maplogs.com/poi/var_na_district_municipality_lithuania.72041.html

The smaller the owned parcel or the more noticeable the influence the stronger the right.

Another consideration in terms of the strength of interest an individual has in an adjacent parcel is the potential influence of the adjacent parcel on the landowner's property. If an individual owns a small parcel that is easily affected by their neighbors, or the potential influence of the neighbors on the landowner's parcel is strong then the landowner should have a stronger interest in determining adjacent use.



Generally, the denser the area the more noticeable a change in adjacent use. <https://patch.com/new-york/new-york-city/see-how-hard-gentrification-has-hit-your-nyc-neighborhood>

The larger the parcel or the less perceivable the effect of the building the less the interest.

Inversely, the larger the parcel or less perceivable the effect of the building the less interest an individual should have in their neighbor's land use patterns. To highlight this, consider the following two examples if you have a neighborhood of single-family homes on 50 by 100-foot lots and it is proposed that one of the lots is to be converted into a multifamily mid-rise development the perceivable effect of this new building on the neighbors is quite substantial. Existing inhabitants of that neighborhood will have to deal with the site of a building that likely consumes the entire lot and does not conform architecturally to the development pattern putting a strain on infrastructure in terms of things like parking sewer and other public services. From this, the effect of the development of the new mid-rise apartment building on existing homeowners would likely be substantial. However, on the opposite end of the spectrum if you have a property owner who owns a large horse farm with a mansion on 500 acres and an adjacent landowner who also owns 500 acres and would like to subdivide their property into 100, 5-acre single-family rural homes the likely effect of the new development on the existing landowner will likely be minimal. Although the density of the new development is 100 times more than the existing development pattern a house on five acres is still a relatively low-density development and has relatively minimal effects on infrastructure since it still likely relies on the same rural infrastructure of wells and septic systems. Thus, the interest of the existing property owner in preventing the development of the new 5-acre lot subdivision is likely substantially less than that of the urban single-family neighborhood in preventing the multifamily development.



The lower the density of an area the less of a perceivable impact use changes have.
<https://www.dreamstime.com/aerial-view-rural-area-town-residential-houses-image182182645>

Variances

There needs to be a process for granting variances that balance the property rights of the person seeking the variance against the other property owners. Contemplating these factors, we can see how a system that weighs and balances the interest of a property owner against their neighbors could be implemented either in zoning but also in the process of granting variances. Presumably zoning changes would you acknowledge that the use of an entire district has changed and must be reassessed to conform to a new standard whereas the process of granting variances may consider things on a case-by-case basis period from this we can view the process of granting variances as a more incremental process whereas the process of zoning is more uniform.

Caveats

Given this model, there are certain caveats that we must consider. As mentioned above, the critical consideration when balancing the interest of property owners is to understand that it exists on a continuum ranging from having no interest to having an absolute interest in property. Although the approach outlined above is legalistic and incorporates features of both property law as well as planning, we should also consider the potential policy ramifications of giving undue influence or lack of influence to land use decisions. Given the economic, political, and social consequences of poor land use decisions, it is useful to consider what happens when property rights are either too strong or too weak.

If the balance favors the property owner too much, they will exert undue control over neighboring properties. In the instance of having too strong of an interest in controlling others' land several negative effects can ensue. Property owners who exert an undue influence over their neighbors ultimately can exert control over land that they have no interest in or ownership of. As

the quip goes: “*Those who control the land own it*” and having overly restrictive land use regulations effectively disenfranchises rightful owners of a parcel from their use of the land. Additionally, it prioritizes the often-subjective preferences of landowners against practical considerations such as the need to grow a community and the needs of others in terms of housing commerce or some other use of the land. As has been noted, consistently gentrified communities whether they be rural or urban often do their best to constrain any type of new growth regardless of whether or not a community can practically accommodate it. Although this may contribute to a quaint community character or a pastoral landscape it directly affects the economic and social livelihood of individuals who do not already own property in that community. Additionally, having too strong of an interest in others' property likely results in the creation of an economic rent. By making it difficult to build or expand a community this constraint drives up the price of existing real estate and proves to be a boom for existing property owners or individuals who own land that is deemed developable. Interestingly it is often the case that real estate speculators in highly regulated areas will buy land in an area that will likely experience a zoning change that will benefit the investor in the future. Such practices are done only at the expense of the prospective inhabitants of that area since they are the ones who must pay the price for such rent-seeking.

On the opposite end of the spectrum, a system that does not contemplate the interest of a property owner in their community creates a different set of similar problems to those systems that exert too much control. Most practically speaking, a system that does not contemplate existing uses that allow for any type of use likely opens the door for chaotic patterns of development that represent somewhat of a downward spiral in terms of quality of life and infrastructure. To understand this one need only look at a slum in the developing world. Under such conditions, there are no rules that dictate what people can build or how they fit in the greater context of the infrastructure of the community. People exist in tightly packed squalid slums with open-air sewers and piles of trash. From a distance, these communities look tightly organized and efficient, at least relative to market principles that mirror biological evolution. However, as anyone who has ever visited or had the misfortune of living in such places will acknowledge, it is not a desirable way for anyone to live. Thus, by creating a structure that attempts to ensure some amount of public health, safety, and quality of life a guarantee of at least minimum standards ensures that people do not have to live under such circumstances.



Lack of regulation in adjacent parcels can lead to community-wide problems and undesirable living conditions for residents.
https://www.reddit.com/r/pics/comments/28cvna/slums_are_not_the_appanage_of_third_world/?rdt=55040

Interestingly this is already acknowledged in planning and land use law. Looking at early attempts at city planning such as in Paris France or court cases such as *Village of Euclid v. Ambler Realty Co*⁹ policymakers and courts have acknowledged that there is an interest in consistency of use and external policy mandates to ensure some conformance with basic standards.

Additionally, from a financial perspective, having a system with no regulation on use but also types of owners incentivizes rent-seeking and speculation to the extreme. Given that speculators often have disproportionate amounts of resources as compared to individual homeowners or property owners a system without rules that limit who can use land in what way or who can own certain types of land simply opens the door for large institutional actors to come into a community and reshape the community in a way that benefits them at the expense of the majority of the people that live there. This is evidence if we look at many of the discussions surrounding abolishing single-family zoning. Although the rhetoric often focuses on issues of social and racial justice as well as affordable housing ultimately the motive for densification is financial in nature by eliminating barriers for speculators to come into a neighborhood destroy it and replace it with high-density housing that they can then rent out to the residents that once owned the neighborhood they've effectively created themselves a massive economic rent. Thus, having standards that at least acknowledge that housing serves an important social and economic purpose to the people who live in it is a way of limiting this consolidation of economic power and rent-seeking.

⁹ *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926).



Urban growth boundaries such as those found in Portland Oregon represent an extreme overreach in land use regulation. They also contribute to massive amounts of real estate speculation. <https://modernfarmer.com/2016/09/portland-urban-growth-boundary/>

In either instance of excessive control of others' land or inadequate control of a community, we must carefully contemplate the purpose of land use relative to broader political, social, and economic goals. For example, housing does not exist simply as an item of pleasure or as a speculative investment. It exists because people need places to live. Economies need workers who are housed satisfied and willing to participate in the economy. Communities need people who are invested in the community and value the community. Society needs individuals who have enough space and quality of life to be able to explore the various features of citizenship. In the absence of any of these potentials ultimately society itself becomes deficient thus land use decisions involve us both immediately as well as society in both a direct and indirect way.

A framework for rural development and land use planning

Andrew Thomas

Rural land use needs to be dynamic rather than rigid.

Rural land use under almost any planning regimen represents a challenge that is different than planning in urban areas. Unlike urban areas which are often heavily dependent upon centralized infrastructure, rural areas can vary tremendously in density and in the type of development that can occur in them. At the same time, there are physical as well as economic constraints to planning in rural areas that influence where and what type of building can occur.

The shortcomings of the traditional approach to rural planning.

When we look at traditional planning in rural areas we see an urban-dominated worldview that often views rural areas as viewscapes¹⁰ or park-like spaces where the inhabitants of those rural areas are a little more than afterthoughts. Typically land use regulation in these rural areas focuses on implementing density restrictions to preserve the “rural character” of an area.¹¹ This type of thinking is often rooted in elite-centered historical mentalities about the order of society.¹² One particularly clear example of this is the Town and Country Planning Act in the UK which sets strict urban growth boundaries for cities to prevent development outside of those areas. Interestingly, much of the rural land in the United Kingdom even presently is owned by a small minority of wealthy elites. The implicit goal in establishing urban growth boundaries is to preserve the estates of the well-to-do and the various hallmarks of the prior feudal order. Looking further back at the history of the United Kingdom what we find is that even historically there have been there has been a push to consolidate and limit an average individual's use of rural lands. Specifically, the Enclosure Acts aimed to close the Commons and remove small farmers from the land so that the nobility might consolidate their estates.¹³ In a more modern capacity, we find that rural zoning often is driven by the preferences and agendas of the urban population at the expense of those who reside in those rural areas. For example, Oregon’s very restrictive rural planning requirements under SB100 have made it difficult for small rural towns in Eastern Oregon to be able to grow.¹⁴ As a result, the population of eastern Oregon has declined while urban areas have grown¹⁵. This has also fueled a movement amongst residents of eastern Oregon to secede from western Oregon and form their own political body since there is a pervasive feeling that the city is not responsive to the needs of rural residents.¹⁶

¹⁰ Van Auken, P. M. (2010). Seeing, not participating: Viewscape fetishism in American and Norwegian rural amenity areas. *Human Ecology*, 38, 521-537.

¹¹ Ryan, R. L. (2002). Preserving rural character in New England: local residents’ perceptions of alternative residential development. *Landscape and Urban Planning*, 61(1), 19-35.

¹² De Smith, S. A. (1948). Town and Country Planning Act, 1947. *The Modern Law Review*, 11(1), 72-81.

¹³ Sharman, F. A. (1989). An introduction to the enclosure acts. *The Journal of legal history*, 10(1), 45-70.

¹⁴ <https://oregoncapitalchronicle.com/2023/03/22/oregon-needs-a-land-use-strategy-to-ensure-a-supply-of-development-ready-land/>

¹⁵ <https://coloradonewsline.com/2023/09/09/oregon-join-idaho-reflects-american-divide/>

¹⁶ <https://www.oregonlive.com/business/2022/12/oregon-population-declined-in-2022-for-first-time-in-decades-census-bureau-says.html>

Traditional rural planning does not contemplate the inherent flexibility in rural areas due to dispersion.

The traditional approach to rural planning ironically does not take advantage of one of the greatest attributes of rural areas which is the inherent flexibility that can exist in a rural area. For example, urban areas must contemplate a delicate balance between competing factors and constraints in particular density and infrastructure. Whereas, rural areas can be dispersed enough so that you can have a variety of uses and a variety of approaches to designing those uses that otherwise would be infeasible in a denser area. For example, a cluster development may have a localized water and wastewater treatment system. Alternatively, individual houses can have wells and septic systems on their own once the lots reach a certain density. Also, it is possible to have conflicting uses in rural areas technically adjacent to one another. However, since they are dispersed most residents or users of a certain area do not see any inherent conflict since the effects of the activity are isolated. Any impartial and modern approach to rural zoning should contemplate this flexibility and attempt to create an architecture that can fully exploit this rather than dictating rigid structures.

Traditional rural planning does not plan for infrastructure to realistically accommodate new growth.

Another limitation of the traditional approach to rule zoning is that it realistically does not contemplate new growth. Under the most rigid systems, it is assumed that an urban growth boundary will constrain urban development in urban areas and will only be expanded rigidly and incrementally.¹⁷ This approach disregards the possibility of new types of development that do not adhere to a strictly urban model. For example, some businesses might not work well in dense urban areas. People may desire a dispersed exurban or low-density suburban existence that cannot truly be considered urban in the sense that it is dependent upon strict planning and infrastructure that is traditionally associated with urban areas.

Traditional rural planning restricts property rights.

The final limitation of the traditional approach to planning in rural areas is that rigid and poorly conceptualized systems restrict property rights in a way that often unduly burdens property owners and ultimately causes substantial economic and social harm. For example, extreme downzoning makes it nearly impossible for a property owner to extract the potential value that may exist in their property.¹⁸ For example, let's say a property owner has 1,000 acres and conceivably, these 1,000 acres could be subdivided into 200, 5-acre lots without any adverse environmental or infrastructure impact. However, let us assume that the minimum lot size in this area is 100 acres. Therefore, the landowner can only divide the property into ten lots. The net loss in this situation is 190 potential building sites. Although there is a balance between the interests of property owners and their neighbors, as a whole rigid systems of rural planning have

¹⁷ Ding, C., Knaap, G. J., & Hopkins, L. D. (1999). Managing urban growth with urban growth boundaries: A theoretical analysis. *Journal of Urban Economics*, 46(1), 53-68.

¹⁸ Gottlieb, P. D., & Adelaja, A. (2009). The impact of down-zoning on land values: A theoretical approach. *Agricultural Finance Review*, 69(2), 206-227.

a deleterious effect on property rights. Given these critiques of the traditional approach to rural planning, the next question to consider is what type of system can be developed to address these issues while still providing the benefits found in good planning.

The new approach to rural planning

Rationality and flexibility formed the basis of a new system of planning for rural areas. As discussed above there's tremendous opportunity for flexibility and approaches to rural planning. Also, certain assumptions specifically that only material effects should be contemplated with regard to government-mandated planning in rural areas are another necessary precondition of a new system of rural planning. To understand how this works the following discussion contemplates some material, or rational factors that may influence planning decisions in rural areas are presented and an analysis is presented as to how a planning framework might utilize these factors in offering determinations as to how the land might be used. Additionally, a discussion of the administrative and judicial appeals process is presented as well. With regards to the latter, it is necessary to contemplate appeals and who ultimately makes land use determinations since they are often evaluated as political in nature.

Elements of flexible rural Planning

To understand how a dynamic system of rural planning might be implemented we need to consider the various features of rural land use.

Parcel

Arguably the unit of analysis for a dynamic system of rural planning is the individual parcel. The land surrounding the parcel represents a contextual variable while the various aspects of the parcel such as water, fire mitigation, and access to emergency services represent internal features of the parcel that must be contemplated in terms of deciding the appropriate potential uses of the parcel.

Water

With regard to water, the availability of water is a critical feature in allowing or disallowing a certain type of development on a parcel. However, mitigation and efficiency of a lack of water availability might be a feature that overcomes scarcity of water in a certain parcel. For example, it may be determined that water is not particularly abundant on a certain parcel, and it cannot support extensive irrigation, lawns, or other water-intensive activities.¹⁹ Rather than simply assuming that development will utilize these activities, the development of a mitigation plan that limits water usage to only sustainable amounts could be implemented. Given that residential water systems if they do not consider irrigation put the same amount of water back into the aquifer that they take out this theoretically could allow for more development to occur in rural areas.

¹⁹ <https://wbdg.org/design-objectives/sustainable/protect-serve-water#:~:text=Recommendations%201%20Use%20Water%20Efficiently%20Incorporate%20water%20efficiency,FEMP%20Best%20Management%20Practices%20for%20Water%20Conservation%20>

Fire

Another consideration is fire mitigation, especially in arid forests. Much like water mitigation planning could account for fire risk by mandating both the management of defensible space as well as building materials. As has been demonstrated in various fire mitigation plans, these approaches have proven effective in limiting the fire risk exposure of otherwise at-risk development in wooded areas prone to fire. For example, defensible space and building material codes are useful tools for wildfire mitigation.²⁰

Emergency services

Emergency services represent somewhat of a dilemma for rural planning. On the one hand, having access to emergency services is considered an essential part of permitting any type of development. However, it is also assumed that people who live in remote or difficult-to-reach areas are likely to have less access to emergency services than urban residents.

Overall, when we consider these internal aspects of a parcel it becomes obvious that there is a great degree of flexibility with regards to how we can accommodate A diversity of development types in rural areas.

Surrounding areas

In addition to considering the internal variables and how they influence what type of development can occur on a parcel, it is also useful to consider the context of the parcel relative to its external environment. In many senses, features of infrastructure such as roads existing uses, and the impact the new development brings to the adjoining parcels and the immediate area of the development are as equally as important as the features that occur within the parcel.

Roads

With regards to roads, it is obvious that having adequate access to a parcel is essential to the development viability of that piece of land. The question exists of how new development should be considered with regards to the burden placed upon existing infrastructure but also conceptual planning related to creating infrastructure to potentially accommodate future development that has yet to be proposed. With regards to new development in areas of existing infrastructure impact fees represent a viable option for financing improvements in existing infrastructure to ensure that development supports infrastructure adequately. Impact fees depending upon the amount of accommodation needed could either be associated with the initial sale of the development or could be incremental and used to finance a long-term bond to improve roads and other infrastructure.²¹ Relative to planning for expansion, given the dispersion of rural areas it is useful to consider long-term scenarios of development that have yet to occur. If for example, a road appears to be a viable candidate for a future arterial carrying lots of traffic planning might contemplate its eventual expansion regardless of whether or not the current burden on that road

²⁰ <https://headwaterseconomics.org/natural-hazards/wildfire-resistant-costs-california/>

²¹ Nicholas, J. C., Nelson, A. C., & Juergensmeyer, J. C. (1991). *A practitioner's guide to development impact fees*.

reflects that potential use. This may be something as simple as providing for a wider right of way that contemplates the eventual widening of the road or some other theoretical accommodation that if the area continues to expand can easily be taken advantage of to ensure that infrastructure will be able to support the additional demand.

Existing uses

Existing uses represent another consideration for a flexible regimen of rural development. As noted in other discussions it is necessary to contemplate the relationship between the proposed development and what already occurs in that area. Although rural areas afford much greater flexibility in terms of accommodating divergent uses a calculus that considers the nature of use as well as the density of development and other features should represent at least some aspect of the determination as to whether or not development can occur in a certain area. Additionally, a balancing test should be applied that contemplates how much effect the new development has on existing landowners versus the property rights of the developer. This then leads to the final feature of a flexible system of rural planning which is an administrative and legal mechanism for addressing disputes regarding planning issues in rural areas.

The flexible approach to rural planning requires a robust and transparent appeals process.

Given the myriad of factors that are both objective and subjective, it is necessary to consider how a property owner or a community member might go about addressing any dispute or conflict over a proposed development. Arguably it is not wise for any one governing body to have final authority over these determinations. If there were one governing body that could make these decisions that governing body may be biased or inadequate in its analysis. Thus, a process of appeals should be contemplated that allows a property owner to contest either a governmental planning determination or community opposition to the use of their land. That determination should consider and give priority to the property interest that the landowner has in the use of their land as they see fit and allow for development so long as it is constrained through regulations or administrative action that is least restrictive of the property owner's interest. What is implied by this is that if for example a property owner is prohibited from developing A parcel due to inadequate water and they can demonstrate that with proper mitigation development would be viable then the least restrictive option would be to permit the development. If the property owner cannot demonstrate this then the development would be prohibited because there is no less restrictive option available to the individual. Having this standard of being able to propose the least restrictive alternatives to a government action provides for a vetting process throughout the appeals process that comes up with an optimal policy outcome that balances the interest of the community against the property rights of the parcel owner. Additionally, having an appeals process that allows a property owner to litigate these disputes throughout a state court system provides an additional layer of integrity since it allows a body external to the planning body to decide as to what is least restrictive.

Conclusion: The flexible approach to rural planning has distinct advantages to the traditional approach.

Considering all these features it is conceivable that a transparent yet effective system of flexible rural development and planning is something well within the reach of any policymaker. This system allows for rural lands to be used in a variety of ways while protecting both the interests of property owners as well as the interests of the community.