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## Commentary

# A Land Use and Planning Agenda for the Next President

**Editor's Note:** *The land use and environmental challenges confronting us today have never been more serious, demanding attention at all levels of government. With the upcoming U.S. Presidential election, this is an opportune time to take stock and question what the role of the federal government should be in addressing these challenges.*

*Consider the following events in October 2007. California fires raged across southern California leaving in their wake more than \$1 billion in damages in San Diego County alone and more than 1,500 homes destroyed; Georgia Gov. Sonny Perdue asked President Bush to declare the northern part of the state a major disaster area because there's only enough water to serve three million residents for 90 days; and Kansas became the first state on October 18 to reject a coal-fired power plant because of its global warming impacts. Let's not forget the Katrina catastrophe in New Orleans and the Gulf communities two years ago. Those communities and families are still struggling.*

*The intersection between local, state, and federal responsibilities for protecting our citizens, building sustainable communities, and planning for the future requires our leaders at all levels to think outside of the box. We asked four prominent land use law professors to write a letter to the next President of the United States, providing some guidance and ideas about what he or she might do upon assuming office in January 2009. Perhaps these suggestions will stimulate some discussion from the candidates themselves; even better, they might spur some much-needed action.*

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## Thrice-Told Tales: The Case for Federal Aid in a Federal System

David Callies, FAICP

Madame President,  
Many weighty matters of importance to our nation will compete for your attention as you assume the awesome responsibilities that come with our highest elected office. Many are beyond my particular expertise as an attorney-planner. However, most of what concerns me are matters of state concern, and, as a firm believer in that definition of federalism that leaves to the states that created our union matters of statewide importance and, indeed, most matters that most directly affect us as citizens, there are nevertheless three

critical areas of great concern that, if not addressed during your term of office with some immediacy, will soon cause us all irreparable damage.

1. **Our infrastructure.** Our public facilities including roads, bridges, water mains, and sewers are in desperate need of repair and rebuilding after decades of neglect, as demonstrated by the tragic bridge collapse in Minnesota last year. But public reports such as those of the American Council on Intergovernmental Relations as long as 30 years ago warned that the state of

our infrastructure was perilous. Its condition threatens not only the health and safety of us all, but also the fabric of our economy upon which both our economic well-being and our place among nations depend. The bill for such repair and rebuilding approaches \$1.5 trillion, according to conservative estimates, clearly beyond the financial resources of our state and local governments. Unrestricted federal grants in substantial amounts will be necessary to restore our public facilities to a condition that will meet the needs of our nation and preserve the safety of its citizens.

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**2. Housing.** Too many of our citizens, both rural and urban, are without adequate shelter, and many more struggle to provide such shelter at the most minimal level. Studies demonstrate that current state and local programs to eliminate regulatory barriers to affordable housing or to require a “set-aside” or quota of workforce/affordable housing in all “market price” developments fail to keep up with demand and do nothing to eliminate a shameful backlog. Only a massive effort at providing subsidized public housing will erase what has become an enormous deficit in adequate housing; but it must be better conceived and planned than the effort made in

the 1960s. Our cities and states desperately need reallocation of our federal tax dollars approaching and exceeding in current dollars what the federal government provided in the 1960s and the 1970s through block grants and the like.

**3) Public lands and parks.** Federal and state lands and national parks, seashores and monuments—our national patrimony—need better stewardship, both in terms of care and protection. Facilities, from accommodation to employee housing, have fallen into disrepair and dereliction. Staff at every level is in woefully short supply. Funds, such as entrance fees, rarely

make their way back to the source of collection. An infusion of federal funds to repair, restore, monitor and patrol such lands, whether federal or state, will staunch and heal the many wounds and return this patrimony to robust health.

There is little if any need for federal oversight and a concomitant increase in the federal bureaucracy for any of these initiatives. Existing state and local governments (and, where necessary, the federal government, as in national parks and reserves) are more than up to the task of repair, restoration, and maintenance. It’s a matter of financial resources, which the federal government ought to provide.

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## The Future of Our Land: Presidential Leadership

John R. Nolon

Dear President:

In just 35 years from the date of your inauguration, the nation’s population will have grown by 100 million people, an increase of 33 percent. The private sector will produce for these new Americans over 70 million homes and over 100 billion square feet of offices, stores, factories, institutions, hotels, and resorts. Researchers predict that two-thirds of the structures in existence in 2050 will be built between now and then.

This growth cannot be allowed to proceed randomly—not without great cost to our economy, environment, and public health. This is neither an

ideological nor a political issue. The consequences of haphazard development are not popular with the vast majority of Americans. They complain about the results of current growth patterns: an increase of asthma and obesity among the young, traffic congestion that stalls commuters, insufficient housing for the workforce and the elderly, the decline of cities as economic and cultural centers, threats to drinking water quality and quantity, reduced habitats and wetlands, higher incidences of flooding, rampant fossil fuel consumption, and an ever-larger carbon footprint.

Today, state and federal land use policy comprises a hodgepodge of initiatives, each crafted earnestly for a moment in time but that together fail to achieve coherence and consensus. The nation’s projected growth creates an unparalleled opportunity for your administration to demonstrate critically needed leadership; this is an opportunity because we are all finally paying attention to the use of the land. Population and development trends require new policies and strategies that build on the powerful role of the private sector and efficiently integrate the roles and resources of all levels of government.

Although the governmental forces directed at land development and conservation are fragmentary, they nevertheless constitute a legal “system.”

The development called for by the next 100 million Americans will largely be reviewed and approved by local officials applying locally adopted land use standards. Our historical approach to influencing human settlement patterns and the use and conservation of the land has been to rely on private-sector forces and to delegate the principal authority to regulate those forces to the local level of government through the adoption of land use plans and regulations.

This reliance on local officials is wise because of the great diversity of local land use conditions in the 50 states and the intimate knowledge of those conditions that exists at the local level. Relying on local governments alone is insufficient, however, because local governments may lack resources, capacity, or understanding of the larger regional interests that are affected by their decisions.

The need to correct the results of local decision making has consumed and puzzled state and federal policy makers for decades and has drawn judges into disputes they are ill-suited to settle. Our animated debates over federalism and states rights and over eminent domain and property rights are confounded by the fact that we have failed to develop a comprehensive approach to land use. Following the Great Depression and the Second World War, land policy has struggled to keep up with our growing population and healthy economy. State and federal regulations and spending programs have been created to fill gaps, largely in reaction to emergencies: toxic spills, contaminated sites, water and air pollution, flooding and other natural disasters, obsolete infrastructure, and housing crises, to name a few.

We watched local, state, and federal officials argue about who was at fault for the utter collapse of the emergency response system during Hurricane Katrina. We see state and federal regulators tangle over their responsibilities for stormwater management, transportation planning, and the control of greenhouse gas emissions, while local officials struggle to react to forces that transcend their legal jurisdiction. Courts provide indistinct guidance regarding which wetlands are within federal control, what state and local actions are prohibited by the Interstate Commerce Clause, and what public interests support the taking of private property.

We are perplexed by state and federal insurance programs that encourage development on barrier islands and other fragile coastal lands while other state and federal agency regulations discourage or prevent it. We learn that pollution limitations that the EPA is mandated to establish under the Clean Water Act are not enforceable against nonpoint polluters, such as residential developers who apply to local land use agencies to build in the drainage basins of federally impaired waters.

Although the governmental forces directed at land development and conservation are fragmentary, they nevertheless constitute a legal “system.” This system is not up to the challenges of guiding the settlement and movement of our next 100 million Americans. It is not the solid foundation needed for governing. Presidential leadership can bring stakeholders from all sectors and every level of government together to create an integrated framework of laws and resources devoted to proper

land use, one that clarifies roles and responsibilities according to the competencies of each level of government.

At the dawn of the last century, investors and residents in unregulated neighborhoods and business districts were deeply worried about inconsistent land uses that threatened their investment, safety, and health. A federal commission responded by promulgating a model zoning enabling act to be adopted by the states at their discretion. Over the next few years, hundreds of local governments adopted comprehensive zoning laws that gave home owners and investors some security about nearby development. This nation faced a serious crisis in the mid-1960s when cities erupted in violence. Then the crisis was graphic and immediate; there was rioting in the streets and neighborhoods burned. President Johnson reacted by creating the National Commission on Urban Problems (Douglas Commission), whose report, *Building the American City*, spawned a host of local, state, and federal initiatives. Today’s crisis, although perhaps less visible on the evening news, carries grave and widespread consequences. It is threatening to all Americans, having serious implications for rural, suburban, and urban areas as well as for our global community.

So many of the critical issues that your administration will confront are linked to the private use of land and how the public influences such uses. There are many leaders at every level of government and in all sectors who stand ready, if called, to take a fresh look at how to create a partnership of resources and imagination under your leadership. We look forward to  
January 20, 2009.

During your presidency, you must ensure that sustainable land development policies are part of all appropriate international treaties and that the United States leads by example.

## The Legacy of the 44th President of the United States—2020 Vision

Patricia E. Salkin

Dear President:

While over time history evaluates the measure of a presidency, your opportunity to shape that legacy begins on Day One. This nation, and indeed the world, needs your leadership, commitment, and stewardship over the implementation of key federal policies and programs to support sustainable land development and conservation strategies. We must build on, and go beyond, the work of the President's Council on Sustainable Development that ended almost 10 years ago. Your initiatives today must look toward the next century. This should be packaged as your 2020 Vision.

The challenges are great: Science has demonstrated the devastating short- and long-term effects of climate change, a process that has accelerated because of practices and policies that have proven to lack sustainability, consideration, and goals. We continue to experience significant population growth throughout the world, yet we are also experiencing an unprecedented graying of America.

Without proper land use planning and policies, population increases can lead to unnecessary sprawl and strains on our supply of clean water and clean air. Lack of sensitivity to a number of planning and environmental issues has further put the public health at risk particularly with respect to lower income and minority populations.

The aging of the baby boomers presents a host of policy challenges, not the least of which relate to land and the environment, affordable housing (as well as a range of necessary housing options), accessibility, and active living. Continuing social equity issues in our communities

remain a disappointing reminder of the failures to provide a decent quality of life for all members of society.

Additionally, much of our aging public works infrastructure, including roads, bridges, and tunnels, were built during an era when there were far fewer automobiles and trucks on the highways. Recent tragedies resulting from lack of investment, stewardship, and concern highlight the preventable outcomes of irresponsible neglect. Investment in America's built infrastructure and appropriate preservation of our natural environment must be the focus of how you will build your legacy. America cannot afford for you and your administration to fail in this regard; your vision must be clearly in focus to develop and implement critically needed creative strategies to meet these demands.

During your presidency, you must ensure that sustainable land development policies are part of all appropriate international treaties and that the United States leads by example. On the domestic agenda, the White House staff should include a key policy advisor for 2020 Vision—someone who is well informed on urban, suburban, and rural development issues (including housing, infrastructure, redevelopment, and economics) as well as environmental issues. Within the first six months, an Executive Order should direct all federal agencies to use the National Environmental Policy Act (NEPA) to fully consider impacts on sustainability when adopting rule making, and to ensure that maximum mitigation measures are employed in achieving various measures of sustainability. An audit should be conducted of existing federal programs and policies designed to encourage sustainabil-

ity to determine whether these programs have met their goals and whether they have been effective.

Following the model of the White House conferences on aging, your presidency should feature a White House conference on the 2020 Vision, with miniconferences across the country designed to address various aspects of sustainability. These events should be organized to enable and encourage participation of diverse constituencies, leading to a greater understanding of the practical problems and challenges experienced across our great country. These programs would provide education and information for lawmakers, policy makers and the general public. A blueribbon commission should then synthesize the information and cull through hundreds of ideas and suggestions from across the country to recommend a new 2020 Vision plan for the country.

Land use control is a matter that is traditionally left to the states and local governments. While this regime should remain—state and local governments serve as wonderful laboratories for democracy and experimentation—the federal government, under your leadership, should revise policies and programs and implement new initiatives designed to provide fiscal incentives for states, regional planning agencies, localities, and the American people to make decisions consistent with the 2020 Vision. These could continue and enhance programs to promote alternative energy, conserve public and private land, and fund the development of state and local sustainable comprehensive land use plans to integrate a host of more specialized land use and environmental plans that have been

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required or incentivized over the years (e.g., disaster mitigation plans, coastal zone management plans, historic preservation plans, etc.).

These recommendations are intended to offer concrete actions you can take immediately to demonstrate leadership and

raise awareness of the need to move the concepts of sustainability into action to ensure livability and longevity of the finite natural resources on the planet. Your vision must be clear, your actions deliberate and decisive, and your commitment to 2020 Vision unwavering. Having successfully

repositioned the United States as a great power leading the effort to promote all aspects of sustainability, our country will be front and center on the world stage and you will have earned a legacy that future generations will reflect upon with great respect and deep admiration.

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## American Cities, Urban Collapse, and Environmental Doom

Edward H. Ziegler

Dear President:

What follows are some thoughts about your presidency and America's future. No doubt you are looking forward to your first term in office. Here are a few things that you might consider when you think about your pledge to be America's first GREEN president. The next time you are aboard Air Force One you might take a hard look at the American landscape passing below. No matter what metropolitan area you are then flying over, you will, no doubt, be looking at what we in the business call low-density regional sprawl. All of the land uses and developed sites are isolated low density pods of completely automobile-dependent development. While the scene below appears peaceful and prosperous, the value and good order of that landscape is built on the promise of an abundant supply of low-priced oil and cheap energy from fossil fuels. Those days are gone and the blueprint for our future embedded in that sprawling built environment poses a number of serious dangers to our urban way of life, to our economy, and to your presidency.

First of all, the hard infrastructure supporting that metropolitan landscape (and future economic growth in this

country) is enormously expensive and inefficient and not being maintained. As the recent bridge collapse in Minneapolis makes clear, our roads, bridges, tunnels, overpasses, levies, pipes, rail lines, and port facilities are actually crumbling. The infrastructure deficit in this country is now estimated at about \$2 trillion and increases at the rate of about \$100 billion each year. This is the built environment we are passing on to our children.

That sprawling landscape also poses dangers to both places and people in this country. The cycle of outward expansion and core urban deterioration continues in many major cities and is now affecting older suburban areas. In the last decade alone 28,000 homes were razed in Detroit. Many American cities, both large and small, continue to lose population. There are now thousands of abandoned shopping malls as businesses leave depressed urban areas for subsidized development sites in expanding regions. As for people, since 1950 more than 2.3 million people have been killed in traffic accidents (that's more than twice the number of battle deaths in all of America's wars combined) and more than 6 million people have been disabled.

You talked during the campaign about the economy, job growth, oil imports, global warming, and climate change. These things are now increasingly mixed together in a potentially dangerous combination, both in this country and throughout the world. Our economy is completely oil-dependent and increasingly vulnerable to fluctuations in global oil supply and price. Over 80 percent of our oil consumption each year goes toward transportation, largely for navigating our automobile-dependent landscape. Each year, the number of miles driven increases, we add three million vehicles to this country's roads, and we continue to increase the amount of foreign oil we import. Consumption of oil in this country between 1995 and 2005 actually increased by 1.1 billion barrels more a year—about the same amount as it did in China.

Rising oil prices harm our global competitiveness, are an enormous tax on job creation, depress other consumer spending, harm our housing market (over 80 percent of our new homes are detached single-family houses built in our automobile-dependent expanding suburbs), and pose the real threat of urban collapse and eco-

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

Oil consumption, largely for automobile use, is the largest single consumer source of greenhouse gases in this country. Fossil fuels still produce nearly 90 percent of our energy, and their use in this country is increasing. According to one report, solar and wind produces less than one percent of this country's energy. We have a long way to go in addressing the problems of peak oil and global warming. Moreover, things may get worse before they get better. This country's population is expected to increase by 100 million people in just the next 30 years, causing our demand for energy to grow enormously. We are expected to build over 70 million new residential units, mostly in newer suburban areas, to accommodate this growth. We also are expected to build a volume of new nonresidential construction that exceeds all the nonresidential space that now exists in this country. To accommodate this growth, we are expected to build hundreds of new power plants by the first half of this century.

That's a lot of development. If it occurs in the form of low-density, automobile-dependent urban sprawl, our chances of successfully addressing the sustainable development issues related to our built environment will be substantially diminished, if not lost forever. Illegal immigration and rising energy consumption, moreover, narrow the window of time and opportunity that exists for our country to address these problems.

The problems of our sprawling built environment are not simply the work of the private enterprise of free markets. The visible hands of government have produced this landscape through federal, state, and local policies, subsidies, and legal restrictions. Nearly everywhere in this country, low-density, regional automobile-dependent sprawl is legally required as the result of local exclusionary zoning and growth management programs.

Whatever the original wisdom of those public policies, that time has passed. Any national comparative analysis makes clear that today low-density urban sprawl has nothing whatever to do with rates of home ownership, housing appreciation, job creation, per capita incomes, or economic growth (just ask people in Luxembourg, London, Barcelona, or Shanghai).

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

Energy conservation and efficiency are unlikely to solve the related problems of population growth, economic development, rising oil consumption, and global warming. Building greener at higher densities and reducing automobile dependence holds the promise of finding real and sustainable solutions to these problems. The cleanest and cheapest power plants and cars are the ones we don't have to build or use due to smart urban planning. Talk to your advisors and you will discover that no one has a clue about the specifics of how we otherwise move toward energy

independence, cut oil consumption and greenhouse gases, and build a sustainable economy. I am afraid we wait at great peril for the invention of the American "dream car" or some other yet unknown technological fix that solves these problems. While research for alternative energy technologies needs to be robustly funded, there are simply no better and sustainable solutions now in sight.

It won't be easy. Entrenched local fiscal and NIMBY (Not In My Back Yard) interests dominate zoning and growth management programs. These local regulatory programs also are impeding the siting and development of cleaner alternative energy wind and solar facilities. Urban planning today is clearly no longer a matter of purely local concern. It's a legal-structural problem of governing authority commensurate with the magnitude of the regional and global problems that have to be addressed. For a variety of reasons, local governments are good at talking the talk but not at actually walking the walk in these areas. Their lead role in this field needs to be substantially tempered by national and state green development policies.

I doubt that I need to make specific policy suggestions. You and your advisors are smart enough to figure out policies to curb regional sprawl and promote greener and less automobile-dependent development in this country. There are no constitutional impediments to this change in policy. Essentially, the problem is how to turn urban planning and zoning from being a large part of the problem, into an important part of the solution to these 21st century problems. A lot of smart people are already hard at work figuring this out, both in this country and around the world.

People in this country may be ready to respond to an ethic of "stewardship" which also holds out the promise of sustainable economic growth and a brighter and greener future for their children and grandchildren. What is clearly needed now is your leadership at the national level and the formulation of clear and substantial federal and state policy initiatives. Tell people the truth. I wish you luck.