Anti-Sprawl Initiatives: How Complete Is the Convergence of Environmental, Desegregationist and Fair Housing Interests?

Zoë Prebble
University of British Columbia Faculty of Law (Student)
ANTI-SPRAWL INITIATIVES:
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ZOË PREBBLE†

Imagine spacious landscaped highways ... giant roads, themselves great architecture, pass public service stations, no longer eyesores, expanded to include all kinds of service and comfort. They unite and separate — separate and unite the series of diversified units, the farm units, the factory units, the roadside markets, the garden schools, the dwelling places (each on its acre of individually adorned and cultivated ground), the places for pleasure and leisure. All of these units so arranged and so integrated that each citizen of the future will have all forms of production, distribution, self-improvement, enjoyment, within a radius of a hundred and fifty miles of his home now easily and speedily available by means of his car or plane. This integral whole composes the great city that I see embracing all of this country—the Broadacre City of tomorrow.

Frank Lloyd Wright (1932)¹

Unfortunately, we have become a disposable society, and we are one of the few nations in the world which throws away its cities once they are worn out. Many cities in America are not being renewed, and it is not surprising that those who are able to leave them do so.

Henry Savitch (2000)²

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¹ PhD Student, University of British Columbia Faculty of Law, LLM University of Michigan School of Law, BA (Hons), LLB (Hons) Victoria University of Wellington, The New Zealand Law Commission, Wellington.  
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Sprawl and segregation are inextricably linked. Sprawl has been occurring on a grand scale in the United States for sixty years, but in the past ten or so years politicians, the media, and the public have begun to take it seriously as a problem that needs solving. The environmental movement has been a vocal advocate of anti-sprawl measures, and has contributed significantly to the growing momentum of the anti-sprawl movement. There is clearly an environmental interest in combating sprawl. This article considers the degree to which that interest aligns with desegregationist and fair housing interests.

Section II of this article explains what sprawl is, and sets out some of its historical causes. Section III sets out the history of public concern over sprawl issues, and compares the public profile of environmental sprawl-related issues and desegregation and fair housing issues. It suggests that the momentum and profile of the environmental anti-sprawl movement may be strategically fortunate for desegregation and fair housing interests. The section poses two focused questions about these converging interests, which it uses as an analytical framework throughout the rest of the article. It also lists a number of available anti-sprawl techniques.

Section IV considers the case study of Portland, Oregon. Oregon is famous for its widely lauded, though not wholly uncontroversial, approaches to land use and urban planning. The section describes Portland, Oregon’s Urban Growth Boundary system, and analyses its positive effects, as well as some criticisms it has faced. The article uses the Portland case study as a test case in addressing questions about the interest convergence of environmental and desegregation and fair housing interests.
II. OVERVIEW OF THE CAUSES OF URBAN SPRAWL

A. What is Sprawl?

“Sprawl” is a multifaceted concept, and a difficult term to define precisely. For the purpose of this article, it is useful to adopt a working definition of the term. Broadly speaking, sprawl involves at least low-density, automobile-oriented, (usually) suburban development.

Furthermore, certain characteristics recur in most working definitions of sprawl. First, sprawl involves low-density land use. Second, it consists of unlimited and noncontiguous “leapfrog” development. Third, under sprawled development, different types

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7 See Roberta F. Mann, Tax Incentives For Historic Preservation: An Antidote to Sprawl? 8 WIDENER L. SYMP. J. 207, 211 (2002); Burchell & Shad, supra note 6, at 140.

8 See Burchell & Shad, supra note 6, at 141; Meredith, supra note 4, at 478. Leapfrog development occurs when suburban areas engage in “NIMBYism” (Not In My Back Yard) and use their local government to discourage growth and development, so that unwanted growth eventually “leapsfrog” the existing suburb to cheap, vacant, rural land that is further out.
of land uses tend to be segregated.\textsuperscript{9} Municipal zoning ordinances often permit only one use of land in each district.\textsuperscript{10} Fourth, sprawl consumes large quantities of exurban agricultural and other fragile lands.\textsuperscript{11} Fifth, in sprawled areas, people must rely on cars to access individual land uses.\textsuperscript{12} Finally, lack of land use planning is often included as a component of urban sprawl,\textsuperscript{13} though this element is not logically necessary.\textsuperscript{14}

\textbf{B. History of Sprawl}

Growth and land development in the United States, certainly since the Second World War, has demonstrated a strong trend of continually expanding urban sprawl.\textsuperscript{15} Populations have come to be less concentrated in urban centers; instead they have fanned out from urban centers along arterial highways and freeways to suburbs and commuter towns.\textsuperscript{16} These development patterns can be seen in most metropolitan areas of the industrialized world, but the trend is more pronounced in the United States.\textsuperscript{17}

\textbf{C. Causes of Urban Sprawl}

There are many interrelated causes of urban sprawl. It is outside the scope of this article to analyze them all in detail, but the next sections of the article briefly set out some of the causes.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{9} See e.g. Mark S. Davies, \textit{Understanding Suburban Sprawl: Lessons From Architecture for Legal Scholars}, 99 MICH. L. REV. 1520, 1530 (2001).
\item \textsuperscript{10} ELIZABETH PLATER-ZYBERK & JEFF SPECK, \textit{Suburban Nation: The Rise of Sprawl and the Decline of the American Dream} 10 (2000).
\item \textsuperscript{11} Burchell & Shad, \textit{supra} note 6, at 141.
\item \textsuperscript{12} Id.
\item \textsuperscript{13} See Bruegmann, \textit{supra} note 5, at 18 (describing sprawl as development “without systematic large-scale or regional public land-use planning”).
\item \textsuperscript{14} “That is, if development is essentially sprawling in nature, it is sprawl regardless of whether or not it was ‘planned’ by a regional government, a local government, or a real estate developer.” Burchell and Shad, \textit{supra} note 6, at 147.
\item \textsuperscript{15} Edward H. Ziegler, \textit{Urban Sprawl, Growth Management and Sustainable Development in the United States: Thoughts on the Sentimental Quest for a New Middle Landscape} 11 VA. J. SOC. POL’Y & L. 26, 29 (2003).
\item \textsuperscript{16} Id.
\item \textsuperscript{17} Id. at 30-31 (characterizing sprawl in the United States as “hypersprawl”).
\end{itemize}
\end{footnotesize}
D. Sprawl as a Result of Individual Preferences

Sprawl is a large-scale phenomenon, but it happens one household at a time. That is, sprawl is the aggregate result of many separate individual householder decisions to live in the suburbs rather than inner cities. Meredith identifies three categories of motivations that lead individuals to choose the suburbs over cities: “economic, social, and political preferences.” These operate both as “pull” factors—that is, attractive features of the suburbs that attract individuals to the suburbs—and “push” factors, those associated with perceived and actual inner city problems.

In economic terms, individuals may be pulled towards the suburbs by factors such as higher quality school services, an “optimal mix of services and taxes,” and a more stable housing market. At the same time, individuals may experience a “push” from the city at the thought of enrolling their children in city schools with generally lower educational outcomes. Individuals with choices may be attracted to the suburbs by the “economic bundle” on offer there, just as the bundle available to them in the city often repels them.

Socially, individuals are attracted to living environments in which they feel “socially comfortable.” They experience “push” factors from those environments where they expect to feel less
socially comfortable. These social preferences can manifest in the form of “white flight” from cities, and the “tipping” of neighborhoods.

Finally, political preferences are relevant because people want to participate in the political process. They often expect that their political voice is more likely to be heard and to have an influence in a more homogenous constituency, where many others will have similar views. People (or more precisely, members of the white majority) are afraid of potential social and political consequences of being a minority where they live, or of not being the clear majority.

E. Sprawl Is Not an Inevitable Product of the Free Market

It is important to note, however, that the above preference factors have not played out in a vacuum. It is a fallacy to suggest that sprawl and segregation in the United States are simply the result of individual preferences playing out en masse in a free market environment. A comparison with other countries’ patterns of geographical development illustrates that sprawl, or American-scaled “hypersprawl,” is not the “inevitable result of consumer preferences in an affluent, open society.” European cities, despite recent trends toward some degree of sprawl, still sprawl to a far lesser degree than American cities.

F. Government Policy and Sprawl

The United States federal government has played a significant role in the creation of problems of sprawl, segregation, and disintegrating cities. This article will briefly discuss three areas

27 Meredith, supra note 4, at 471-72.
31 Lewyn, supra note 29, at 91.
of federal regulation that have aggravated the trend towards sprawl:32 housing and transportation policy, and the inadvertent effects of certain environmental statutes. It then discusses state and local government level contributions to sprawl, with particular reference to zoning.

G. Federal Housing Policy and Sprawl

Since the Second World War, the Federal Government has provided a range of home ownership subsidies, such as “federal mortgage lending policies, the tax deduction for mortgage loan interest, capital gains tax deferment, and property tax subsidy payments.”33 Such subsidies have provided home owners with additional resources with which to migrate from urban to suburban areas. Home loans made under the federal government’s Federal Housing Administration (FHA)34 and Veterans Administration (VA)35 mortgage underwriting programs were a major factor in the rapid post-Second World War suburbanization of America.36 The programs also ensured that the kind of suburbanization that occurred was highly segregated, as they “adopted and propagated the orthodoxy that homogeneity was necessary to ensure stable housing values.”37 The Federal Government also funded the development of infrastructure, such as sewerage treatment systems.38 A suburb cannot sustain new housing development and

34 Douglas S. Massey & Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass 53 (1993) (“The FHA loan program was created by the National Housing Act in 1937.”).
35 Id. at 52-53 (“The VA program was authorized by the Servicemen’s Readjustment Act of 1944.”).
36 Id. at 53.
37 Cashin, supra note 32, at 103; see also Massey & Denton, supra note 34, at 54.
38 Ward, Brown & Lieb, supra note 33, at 326.
new residents without sufficient infrastructure of this kind; infrastructure development is simply a suburban homeowners’ subsidy by another name. Such regulations have generated “excess capacity,” facilitating sprawl from the 1960s to the early 1980s.\footnote{Id.}

H. Federal Transport Policy and Sprawl

Federal transportation policy and funding has also contributed to sprawl, for instance, through the government “subsidization of automobile use through the funding of road and highway construction, parking, and the cost of importing oil.”\footnote{Id.}

Federal policy encouraged automobile transit over public transport. Since the establishment of the Highway Trust Fund in 1956,\footnote{Highway Revenue Act of 1956, ch. 462, § 209, 70 Stat. 387, 397-401 (1956) (codified as amended at I.R.C § 9503 (2000)).} the federal government has viewed the interstate highway system as a public good worthy of considerable ongoing investment.\footnote{Meredith, supra note 4, at 475.} Public transport on the other hand has struggled in part because government has viewed it as an area of private investment that should not draw on taxpayer contributions.\footnote{Id.} Once sprawl became established, it also became more difficult in absolute terms to find comprehensive public transport solutions; it is harder to run efficient public transport services in scattered, low-density development than in condensed, built-up cities.

These policies encouraged sprawl by making it easy and cheap to commute by car from the suburbs to employment in the city.\footnote{CASHIN, supra note 32, at 103.} In absolute terms, commuting long distances between home, work, shopping centers, and so on is less economically efficient than living in a place where all of those things are closer together. In a completely unregulated market, suburban living would be more expensive than city living. However, the federal government, both directly through subsidies, and indirectly by failing to make...
commuters pay the full costs of driving to work, has subsidized, fostered, and encouraged sprawl.

I. Federal Environmental and Land Use Policies and Sprawl

The federal government’s contributions to sprawl are too numerous to catalogue in this article. But in the context of the article’s focus on anti-sprawl measures, it is interesting to consider a third area in which federal policy has contributed to sprawl: environmental regulation. The brief discussion in this section illustrates that otherwise laudable federal policies can have unintended effects with regard to sprawl.

Federal environmental statutes influence local land use.45 One unintended consequence of some environmental regulation is that it can operate to discourage productive re-use of urban land, further prompting developers to focus on city fringes and exurban areas. For instance, the possibility of liability under Superfund46 has in some instances had the unintended consequence of discouraging landowners from investigating soil conditions or transferring properties.47 It has similarly discouraged developers


46 Superfund is the common name for the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), a United States federal law designed to clean up abandoned hazardous waste sites. Superfund provides broad federal authority to clean up releases, or threatened releases, of hazardous substances that may endanger public health or the environment. The law authorizes the Environmental Protection Agency (EPA) to identify parties responsible for contamination of sites and compel the parties to clean up the sites. Where responsible parties cannot be found, the Agency is authorized to clean up sites itself, using a special trust fund. A Superfund Progress Report 8 EPA J. 6, 6 (1982).

47 Ward, Brown & Lieb, supra note 33, at 326.
and municipalities from acquiring older, abandoned industrial sites with actual or perceived contamination problems, (known as “brownfield sites”), also stifling lending on these sites.\(^4\) The author does not suggest that environmental legislation of this kind is undesirable, but rather that the regulatory landscape is complex. By focusing too closely on any specific policy issue, for instance, the clean-up of contaminated sites, it is possible to miss related and important issues, such as the environmental need to combat sprawl.

**J. State and Local Body Policies and Sprawl**

It is not only government at the federal level that has contributed to the development of sprawl, segregation, and urban blight. Policy and funding decisions at state and local levels have also had significant impacts. It is outside of the article’s scope to go into detail about these, except for the key example of land zoning, discussed in the following section.

**K. Municipal Zoning and Sprawl**

A central area in which local government policy contributes to sprawl, and segregation, is zoning, which is done at the city level. In the landmark *Village of Euclid case*\(^4\)\(^9\) in 1926, the United States Supreme Court upheld the constitutionality of local zoning. It ruled that a city may regulate land use to avoid mixing together business and residential uses and to protect low-density, detached single-family homes from higher density apartments, and their occupants.\(^5\)

Suburban zoning codes (the constitutionality of which was affirmed by *Euclid*) contribute to sprawl by “prohibit[ing] mixed uses in a single area.”\(^5\)\(^1\) The codes typically “separate everything


\(^{50}\) Vill. of Euclid v. Amber Realty Co., 272 U.S. 365, 394-95 (1926); see Ziegler, *supra* note 15, at 65, n.96. (“Commentators have noted that the court’s decision reflects a class bias prevalent at that time, and which probably still exists in many exclusionary anti-growth communities.”).

\(^{51}\) Davies, *supra* note 9, at 1530.
from everything else,“52 often effectively excluding the less affluent from entire neighborhoods and suburban communities. Zoning separates not only “incompatible uses,” it applies to every use. 53

III. INTEREST CONVERGENCE IN COMBATTING URBAN SPRAWL

A. History of Sprawl Concern

Academics began warning of the dangers of sprawl as early as the late 1950s.54 However, it did not receive significant notice from national leaders until the late 1990s.55 Vice President Al Gore,56 and numerous other commentators (particularly from

53 Davies, supra note 9, at 1530 (emphasis added).
54 See IAN L. MCHARG, DESIGN WITH NATURE 29 & 86-93 (1969) (encouraging ecological planning as an alternative to sprawl, and a more general solution to “the problem of the place of nature in man’s world,” at 19; William H. Whyte, Jr., Urban Sprawl, in THE EXPLODING METROPOLIS 133, 133-36 (William H. Whyte, Jr. ed. 1958) (describing the problems and causes of sprawl as well as supporting action against sprawled development).
55 See Jodie T. Allen, Sprawl, From Here to Eternity, U.S. NEWS & WORLD REP., Sept. 6, 1999, at 22 (exploring the causes of sprawl and solutions to sprawl proposed by the government); Judith Havemann, Gore Calls For ‘Smart’ Growth: Sprawl’s Threat To Farmland Cited, WASH. POST, Sept. 3, 1998, at A17 (quoting the then Vice-President that sprawl has created “a vacuum in the cities and suburbs which sucks away jobs . . . homes and hope” and that “as people stop walking in downtown areas, the vacuum is filled up fast with crime, drugs and danger”); Haya El Nasser & Paul Overberg, What you don’t know about sprawl: Controlling development a big concern, but analysis has unexpected findings, USA TODAY, Feb. 22, 2001, at 1A (ranking and analyzing metropolitan areas based on a “sprawl index”); Michael Pollan, Land of the Free Market, N.Y. TIMES, July 11, 1999, § 6 (Magazine), at 11 (writing about the politics of sprawl); Todd S. Purdum, Suburban ‘Sprawl’ Takes Its Place on the Political Landscape, N.Y. TIMES, Feb. 6, 1999, at A1 (discussing the role of sprawl in national and state politics); Matthew Vita, Sprawl Emerges As Hot Issue in Swing Districts, WASH. POST, Sept. 24, 2000, at A12 (reporting that sprawl had become a major issue in congressional campaigns).
within the environmental movement)\textsuperscript{57} criticized urban sprawl at that time.\textsuperscript{58} Concurrently, public awareness of sprawl issues also began to increase. For instance, in the 1998 elections alone, there were approximately 240 ballot initiatives designed to combat sprawl in various ways, and about 70 percent of them were passed.\textsuperscript{59}

It is outside this article’s scope to list the various negative economic, social, and environmental consequences of sprawl. For reasons of brevity, the article proceeds on the basis that there are considerable problems associated with sprawl under all three of those categories. The most important from the perspective of this article’s analysis are the social and economic effects in relation to housing segregation,\textsuperscript{60} and environmental consequences of sprawl.\textsuperscript{61} In social terms, sprawl often “leaves behind a central core of, disproportionately poor and minority citizens to face crumbling infrastructure, inferior schools, and a severely eroded tax base.”\textsuperscript{62} The environmental effects of sprawl include direct displacement effects, through destruction of habitats for development,\textsuperscript{63} and indirect effects, such as traffic congestion and resulting air pollution and greenhouse gas emissions,\textsuperscript{64} “water pollution, soil erosion, and increased energy consumption.”\textsuperscript{65}

It is clear that environmentalists and affordable housing advocates each have an interest in combating sprawl. In the words of land use and environmental advocates, “we need to have much less segregation of race and income imposed through regulation

\textsuperscript{57} F. KAID BENFIELD, ET AL., ONCE THERE WERE GREENFIELDS, 1 (1999); Sierra Club, Sprawl Factsheet, http://www.sierraclub.org/sprawl/factsheet.asp.
\textsuperscript{58} Lewyn, supra note 56, at 302.
\textsuperscript{59} See Savitch, supra note 2, at 333; see also Nechyba & Walsh, supra note 3, at 177-78.
\textsuperscript{60} See Buzbee, supra note 48, at 69; Massey & Denton, supra note 34, at 54.
\textsuperscript{61} See e.g., Meredith, supra note 4.
\textsuperscript{63} Meredith, supra note 4, at 463-64.
\textsuperscript{64} Buzbee, supra note 48, at 71.
\textsuperscript{65} Meredith, supra note 4, at 464-66; see also Mann, supra note 7, at 211.
than we have had in the past . . . . Here’s where environmentalists and affordable housing advocates have common cause: breaking down barriers to mixed income housing has such great environmental and social benefits.”

B. The Public Profile of Environmental and Anti-Segregation Problems

Environmentalists have been among the most outspoken advocates of anti-sprawl legislation. While there are still some who are skeptical about the reality and seriousness of issues such as climate change and the peak oil crisis, climate change and peak oil deniers are now in the minority. Climate change issues, particularly in the past ten years, have gained a huge public and political profile. But the issue of segregation in the United States has a much lower profile.

A 2005 study examined which specific sprawl-related issues were covered in the media and had generated public


67 See Meredith, supra note 4, at 448.


69 Matthew Wild, Optimism Versus Reality in Peak Oil Media Battle, POST CARBON INSTITUTE ENERGY BULLETIN (May 3, 2010), http://www.energybulletin.net/52671.

70 See Spencer Weart, The Public and Climate Change (cont.—since 1980), THE DISCOVERY OF GLOBAL WARMING (July 2009) http://www.aip.org/history/climate/public2.html#L_M080 (detailing the fascinating and detailed history of the evolution of public awareness on these issues).

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concern. Environmental concerns were at the top of the list, with more than a third of all sprawl-related press coverage focusing on environmental issues. Further, this proportion of coverage was rising.

The study did not specifically list segregation or race-related unfair housing impacts of sprawl among the various sprawl-related issues it tracked. The closest issue covered by the study was “urban decline,” which received much lower volumes of press coverage. In fact, concern about urban decline fell by almost half during the period of the study. This data confirms that environmental sprawl-related issues currently occupy a more prominent place in the public and political imagination than issues related to segregation and racial inequality.

C. Need for a Perceived Disaster in Order to Combat Sprawl?

Powerful established dynamics and interests feed and nurture sprawl. Efforts to combat sprawl are often met with protest, with claims of “infringement of property rights, threats to

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73 It seems reasonable to assume that that trend of increased coverage has likely continued since 2005, given that environmental issues appear anecdotally to have continued to gain greater prominence in the five years since the study.

74 Fan, et al., supra note 72, at 4. (Concerns about urban decline represented 7.1% of all sprawl-related press coverage over the 1995-2004 period. However, it “fell from percent of all specific expressions of concern in 1995-1996 to just 5.5 percent in 1999-2000.” The study authors suggest this drop may have related to the “rapid economic growth of the late 1990s, during which time urban areas fared comparatively well.”).
economic development, and curtailment cherished of freedoms.”

Conservatives are often skeptical of anti-sprawl policies.

In light of this, some commentators have suggested that environmental initiatives and laws are more likely to result from a response to a perceived crisis than from dispassionate, analytical discussion. One way in which a perceived crisis can provide the impetus for change is by giving politicians the opportunity to engage in “entrepreneurial politics,” where they can “seize upon” a topical issue and use it to gain political capital.

At present it would be much harder for a politician to strongly capitalize on measures taken for the benefit of minority peoples, and people who lack political power and wealth, than on environmental measures. From this point of view, it is arguably something of a “lucky break” for the desegregationist and fair housing cause that its interests in combating sprawl appear to align with the interests of the green movement. In principle at least, desegregation and fair housing interests could see excellent outcomes from anti-sprawl initiatives, even if those initiatives are taken for primarily environmental reasons. That is, there may be considerable interest convergence between environmental and the desegregationist aims.

D. Two Principled and Strategic Questions about Interest Convergence

In practice, however, promoters of desegregation and fair housing interests need to consider two important questions before completely and enthusiastically hitching those interests to the environmentalism wagon. The first question is whether a civil rights based, desegregationist, fair housing movement loses something in symbolic terms by allowing its own core anti-sprawl

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75 Savitch, supra note 2, at 345.
76 Lewyn, supra note 29, at 303.
77 Buzbee, supra note 48, at 128.
78 Id. at 130.
The second question is whether anti-sprawl measures adopted for chiefly environmental (or other) reasons, even if successful on their main anti-sprawl terms, will in fact also lead to good race-related and fair housing outcomes. This question is concerned with whether the apparently aligned anti-sprawl interests of the civil rights and green movements are in fact perfectly aligned.

The rest of the article focuses on the second question. The first is an important strategic and principled question for the desegregation and fair housing movement when planning its anti-sprawl campaigning approach. But in a sense, the second question is logically prior to it: if environmentally motivated anti-sprawl initiatives cannot deliver good desegregation and fair housing outcomes, then the fair housing movement need not decide whether to make strategic compromises about how it presents and politically markets its own ideals.

“Urban sprawl is not a new problem: for sixty years it has been developing and becoming increasingly entrenched.”\textsuperscript{80} However, it is now a distinguishing characteristic of the modern American landscape. A much newer development is lawmakers’ attempts to address the problems associated with sprawl.\textsuperscript{81} In order to address the second question of whether environmentally-motivated anti-sprawl initiatives are likely to yield positive anti-segregation and fair housing results, this article briefly sets out several key forms that anti-sprawl measures can take.

E. Anti-Sprawl Philosophies: “Smart Growth” Planning and “New Urbanism”

Anti-sprawl measures are often described as “smart growth” strategies. The phrase seems intended to convey careful land use planning with the avoidance of unnecessary sprawl, while also making clear that it is not an anti-growth approach.

\textsuperscript{80} Meredith, \textit{supra} note 4, at 448.

\textsuperscript{81} \textit{Id.}
New Urbanism is a related urban design movement that is staunchly anti-sprawl.\textsuperscript{82} It has “four guiding principles: diversity; pedestrian orientation; accessible public spaces and community institutions.”\textsuperscript{83} Ideally, New Urbanist communities include housing for diverse ages, races and incomes—“for the smart growth movement as a whole, inclusiveness—social, racial, economic—has become a categorical imperative.”\textsuperscript{84}

Proponents of New Urbanism do not provide a formulaic prescription,\textsuperscript{85} but instead offer examples of successful ways to foster diversity. These include measures like Portland, Oregon's zoning ordinances,\textsuperscript{86} Montgomery County, Maryland's affordable housing requirements,\textsuperscript{87} and the Silicon Valley Manufacturing Group's transit system.\textsuperscript{88}

\textsuperscript{82}See William Fulton, \textit{The New Urbanism Challenges Conventional Planning}, Land Lines, September 1996 at 3 (discussing how New Urbanism, as a development concept, is usually characterized as a more compact, higher-density mixed-use and integrated development design, with a range of housing types (including affordable housing) and a pedestrian friendly neighborhood, sometimes, in concept, linked with mass transit.).

\textsuperscript{83}Meredith, supra note 4, at 478; see also Cong. for the New Urbanism, Charter of the New Urbanism,) http://www.cnu.org/charter.

\textsuperscript{84}Baker, supra note 66, at 3.

\textsuperscript{85}See DUANY et al., supra note 52, at 54.

\textsuperscript{86}Henry R. Richmond, \textit{Seven}, in CHARTER OF THE NEW URBANISM 53, 54-56 (Michael Leceese & Kathleen McCormick eds., 2000) (discussing how Portland's Urban Growth Boundary has reduced competition among municipalities to attract larger housing lots and has increased the amount of land zoned for multi-family housing.

\textsuperscript{87}Montgomery County, Maryland, uses a mandate and reward system by requiring housing projects with more than fifty units to provide at least fifteen percent of their units as low- to moderate-income housing. See DUANY et al., supra note 52, at 54.

\textsuperscript{88}The Silicon Valley Manufacturing Group used new rail lines to connect areas of medium-density, mixed-use to greenfield sites of affordable housing. Richmond, supra note 86, at 56-57.
F. Overview of Anti-Sprawl Techniques

There are numerous possible smart growth and anti-sprawl approaches. One broad approach is to remove existing federal and lower-level government regulation that encourages sprawl, and encourages people to move to the suburbs by making it artificially cheap to do so. More specifically, anti-sprawl measures may address policy areas such as transportation, taxation, housing, school funding, and zoning and impact fees. These are mainly targeted at “pull” factors. “Pro-city” measures, to re-magnetize cities are also important, but

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89 But see Buzbee, supra note 48, at 98-124 (discussing the constitutional limits of the federal government in addressing sprawl and advocating the use of the conditional power to create indirect anti-sprawl incentives).


91 See supra sections II.E-II.J, which explain that sprawl is not the inevitable product of the free market. The sections consider the ways in which housing, transport, and environmental and land use policies at federal, state, and local body levels have contributed to the emergence and growth of sprawl. See supra sections II.E-II.J.


93 See, e.g., Meredith, supra note 4, at 496; also Mann, supra note 7, at 209. (discussing how E.g. tax laws can be amended to provide tax breks for mortgage payments, and to provide new incentives to encourage urban development and the repair of existing homes (to an equal or greater degree than measures encouraging the creation of new suburban housing), see Meredith, supra note 4, at 496; also Mann, supra note 7, at 209.).

94 See, e.g., Mann, supra note 7, at 209, n. 21. (“Zoning to combat sprawl has its origins in the 1920s with the Standard Zoning Enabling Act, see, e.g. CAL. GOV’T CODE §§ 65800-65804 (West 1997); the Standard City Planning Enabling Act, see, e.g., CAL. GOV’T CODE §§ 65300-65307 (West 1997), and the United States Supreme Court’s recognition of the legitimacy of zoning in the 1926 decision in Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). Large lot zoning was an early attempt to limit development, but has proved ineffective in reducing development.”).


96 Nechyba & Walsh, supra note 3, at 466.
commentators have noted that “anti-suburb” initiatives are likely to have greater direct success in combating sprawl.  

Commentators have also noted that it is difficult for local governments to address the systemic problem of sprawl without statewide co-ordination. For instance, if one county takes a hard line on sprawl, a neighboring county may have incentives to permit sprawling development, so as to mop up the stifled consumer demand that spills over from the first county. On this basis, some commentators argue that “the model government for a sprawling metropolitan area should be formed along regional rather than local boundaries.” The following sections of this article look at a case study of the anti-sprawl approach of Portland, Oregon.

IV. CASE STUDY: THE ANTI-SPRAWL APPROACH OF PORTLAND, OREGON

Oregon’s approach to sprawl and land use is commonly cited as the finest land use model in the country. But it is not without its critics. The rest of this article considers Oregon’s anti-sprawl approaches. It assesses their success in general terms, that is, how well they have worked to minimize sprawl. But, it also analyzes whether Portland’s anti-sprawl successes have translated into desegregation successes. The case study of Portland

98 Maya, supra note 92, at 890.
99 Id. at 880 (“For instance, by prohibiting the subdivision of its farmland into low-density residential lots.”).
100 Id.; Maya, supra note 92, at 879.
102 See, e.g., Sen. Ron Wyden & Joshua Sheinkman, A Road Map for Environmental Law in the Twenty-First Century: Follow the Oregon Trail 30 ENVTL. L. 35, 36 (2000) (“Oregon may be the best model anyone has come up with yet for how the economy and the environment can grow together”); see also Buzbee, supra note 48, at 126-28.
is an excellent test of the degree of convergence of environmental, and desegregation and fair housing interests.

A. The Urban Growth Boundary (UGB) System

Oregon implemented an Urban Growth Boundary (UGB) system in 1980. A UGB is effectively a dividing line drawn onto a map, surrounding an already urban area. UGB systems prohibit both commercial and residential development of land outside of the growth boundary. Each individual community is responsible for creating and enforcing its UGB, which gives communities flexibility in how strictly each enforces the law. Portland interpreted the state law more strictly than many other Oregon local governments, which has made it a more famous example nationwide.

B. Positive Effects of the UGB System in Portland

The Oregon UGB has now been in effect, and relatively strictly enforced, for 30 years. In that time, the city of Portland has grown and development has reached the UGB, so that the “edge of Portland is now as sharply delineated in many places as the edge of fortified hill towns in medieval Italy.” But, unlike most other

103 The Portland case study could also be analysed with regard to other interests, such as economic and political interests. For the sake of simplicity, however, this article focuses on environmental interests.
104 Note that two other states require the creation of UGBs (Washington, since 1994; and Tennessee, since 2001). However, Oregon’s system is the oldest, and so provides the best long-term case study in the context of this article with respect to the effectiveness of UGBs. See Lewyn, supra note 29, at 156 & n. 52.
107 See Lessard, supra note 105, at 53; see also Kubasek & Frondorf, supra note 105, n. 53 and accompanying text.
108 See Lessard, supra note 105, at 53.
109 Id. at 54.
cities in the United States, Portland has managed to grow in population without also growing geographically.\(^{10}\)

The UGB has been relatively successful in encouraging redevelopment of Oregon’s urban cores.\(^{11}\) This is particularly true of Portland, which “has legislated it will grow through densification rather than expansion.”\(^{12}\) Developers have had no choice but to direct their attention to developing land inside the city proper.

With the shift towards higher-density development, Portland has been able to implement and promote its public transport system (MAX).\(^{13}\) The city is also developing neighborhoods into mixed-use communities.\(^{14}\) Nor has this come at the expense of parks and open spaces.\(^{15}\) The UGB system appears to have been relatively successful when assessed against general anti-sprawl goals. Nonetheless, it has also been controversial. For instance, opponents have raised principled libertarian arguments, claiming that Oregon’s UGB systems allows government to paternalistically impose its view of urban living onto citizens who just want to be free to pursue their own vision of the suburban American dream,\(^{16}\) and constitutional concerns. The next sections of the article assess these objections.

\(^{10}\)See Kubasek & Frondorf, supra note 105 nn. 58-59, at footnote 57 and accompanying text (“[T]he growth boundary does have some flexibility, and has been amended a number of times in its 30-year life. It had been subject to 30 small adjustments and two “general expansions” that added 4,000 acres for over 18,000 residential units.”).

\(^{11}\)See Michael Lewyn, Sprawl, Growth Boundaries, and the Rehnquist Court, 2002 UTAH L. REV. 1, 23-29 (2002) (demonstrating that Portland, Oregon’s largest city, has retained middle-class residents more effectively than core cities of comparable regions).


\(^{14}\) Id. at footnote 65 and accompanying text.

\(^{15}\) Id. at footnote 67 and accompanying text.

\(^{16}\) See Clint Bolick, Subverting the American Dream: Government Dictated “Smart Growth” is Unwise and Unconstitutional, 148 U. PA. L. REV. 859, 864 (2000) (asserting that UGBs force Oregonians to “live in more crowded cities,
C. The UGB System and the Fifth Amendment

UGBs have been the focus of constitutional litigation regarding whether or not they violate the Takings Clause of the Fifth Amendment, which requires the government to compensate landowners if it “takes” their property. However, under current case law, Courts have generally deferred to municipal land use regulations, including those designed to limit sprawl, and have held that consequential loss in property value of properties outside of the UGB do not amount to be unconstitutional takings.

D. Controversy over Traffic Effects of the UGB System

Some apparent successes of the UGB system have also proved controversial. For instance, environmentalists argue that “sprawl increases traffic congestion, because it increases the number of cars on the road and the distances drivers travel.” UGB critics argue, on the other hand, that anti-sprawl policies such as UGBs actually increase congestion by forcing a constant or growing number of cars onto the same amount of land. Independent studies indicate there may actually be a rather weak

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smaller houses, and more congested neighborhoods in order to conform to [government's] vision of what Portland [the state's largest city] ‘ought’ to be.”

117 U.S. CONST. amend. V. (private property may not be “taken for public use, without just compensation”).


120 Benfield, supra note 57, at 35-36.

connection, or no clear causal connection at all, between UGBs and traffic congestion.  

E. Controversy over Whether the UGB System Actually Increases Sprawl  

Another area of controversy relates to the question of whether UGB systems really do decrease overall sprawl. UGB opponents sometimes argue that restrictive zoning actually promotes sprawl by forcing people who crave a suburban lifestyle to commute longer distances to work. This is a kind of “super leap frog” argument, where new development leaps further than it would need to under normal sprawl conditions, to the nearest area with a more permissive planning approach. Families in search of affordable housing will have to follow this sprawled development outside of the UGB.

Despite these anti-UGB objections, however, there is a great deal of literature to suggest that Portland has been successful in containing sprawl. It is outside this article’s scope to resolve this dispute.

F. Controversy Over Whether the UGB System Makes Housing Less Affordable  

Finally, and most importantly in the context of this article, opponents of UGBs have argued that they can make housing less affordable by limiting the supply of available land, while demand

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Anti-Sprawl Initiatives continues to increase. Critics of smart growth approaches point to increased housing prices in cities that have limited sprawl, such as Portland. A 2002 report estimated that:

[H]ad Portland’s policies been applied in major metropolitan areas nationwide over the past 10 years, over a million young and disadvantaged families, 260,000 of them minority families, would have been denied the dream of home ownership. Portland-like site restrictions would have increased the average cost of a home by an additional $7,000 – over $10,000 in 2002 dollars [and more again in 2011 dollars]. For those unable to purchase homes, the cost of renting would have risen by six percent.

If this is accurate, “it means that that housing in heavily regulated areas will become increasingly expensive, forcing middle- and lower-class residents to move either to impoverished and decaying portions of the urban core, or to the sprawling fringes of the metropolitan areas.” This would almost certainly contribute to racial segregation within metropolitan areas. Some researchers have argued that sprawl increases minorities’ housing

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125 Id. at 870-71 (asserting that UGB has raised housing prices in Portland); Bruegmann, supra note 5, at 216; Edward Glaeser & Joseph Gyourko, *Zoning’s Steep Price*, REGULATION, 24 (Fall 2002) (linking zoning to increased housing prices); Oliver A. Pollard, III, *Smart Growth: The Promise, Politics, and Potential Pitfalls of Emerging Growth Management Strategies*, 19 VA. ENVT'L L.J. 247, 283-284 (2000); but see Arthur C. Nelson & Susan M. Wachter, *Growth Management and Affordable Housing Policy*, 12 J. AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT L. 173, 178-79 (2003) (suggesting that Portland housing price have not increased at a greater rate than in other regions without UGBs).
127 QUANTECON, supra note 124.
128 QUANTECON, supra note 124, at iv.
129 Maya, supra note 92, at 886-87.
opportunities, and suggest the corollary that restricting sprawl will reverse these housing opportunities. Some commentators have gone so far to refer to restricted growth policies as “the new segregation,” on the grounds that they deter African-Americans from the housing market at disproportionate rates.

However, the effects of growth boundaries upon housing prices are unclear. Studies of the Oregon system’s effects upon prices have been characterized as a “bewildering duel of statistics” with “inconclusive” results. It is useful here to look closely at the Portland case study to examine what effect the UGB system appears to have had on the availability of affordable housing, and whether racial segregation patterns have changed in the 30 years it has been in effect.

G. Case Study within a Case Study: Albina

A useful case study when considering the effect of Portland’s UGB system on the availability of affordable housing and on racial segregation patterns is the African-American neighborhood of Albina, in Portland. Albina’s story during the twentieth century mirrors that of many American cities and neighborhoods. For reasons of space, the years before 1980 are only broadly outlined here.

During the twentieth century, “segregation progressively became entrenched in Portland, and Albina became a

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131 See QUANTECON, supra note 124, at vi-vii.
132 Id. at v.
134 BRUEGMANN, supra note 5, at 210.
135 See Karen J. Gibson, Bleeding Albina: A History of Community Disinvestment, 1940–2000, 15 TRANSFORMING ANTHROPOLOGY 3, 4 (2007) (“Although the scale of segregation has been small relative to large cities in the Midwest and Northeast, in large part due to the comparatively low black population, the consequences for residents are similar”).
predominately African-American, and poor, neighbourhood." In brief, the neighborhood initially experienced tipping, and white flight, followed by systematic disinvestment in the neighborhood by the city. The mechanisms or “compulsions” used in other cities to keep African-Americans “in their place,” such as physical threats, cross burnings, and redlining tactics, were likewise employed in Portland. Absentee landlords bought up housing cheaply as white flight took place, and then rented it to minority occupants at inflated prices. Over time, the housing stock aged, rents fell, and the housing stock often became dilapidated through overcrowding and landlord neglect. The neighborhood became a slum, hitting “rock bottom” in the 1980s.

During the 1990s, the city re-invested in the neighborhood. Combined with the effects of an economic boom period, the city’s efforts were very successful in terms of the city’s revitalization aims. Albina’s population had been dropping for 50 years, but in the 1990s, it began once more to experience population growth. The pattern of racial transition reversed, as whites returned to the areas they had fled decades earlier, tempted now by the affordable prices and city’s reinvestment efforts. Blacks had comprised a substantial majority in the neighbourhood, but this began to change. This meant that “for the first time in 60 years, since the

137 That is, the systematic withdrawal of capital and the neglect of public services, like schools; building, street and park maintenance; garbage collection; and transportation.
138 See Gibson, supra note 135, at 4 (referring to CHARLES ADAMS, FORBIDDEN NEIGHBORS: A STUDY OF PREJUDICE IN HOUSING (1955) (which set out five categories of mechanisms or compulsions ensuring that black people stayed “in their place”).
139 See id. at 18
140 See id. at 5.
141 Id. at 18.
142 Id. at 20.
143 See id.
144 Id.
hardening of the color line in 1940, segregation fell below a level considered high.”

On its face, that sounds positive: Albina stopped looking like a racially segregated area. But the changes in Albina were not only the result of desegregation, they were also the result of gentrification. There were real reasons for African-Americans in Albina to feel ambivalent about this process. During the course of the 1990s, African-American home ownership rates in Albina fell by 36 percent as of 1999, and white home ownership rates rose by 43 percent. The proportion of African-American renters also decreased. The gentrification process “displac[ed] many low-income folks to relatively far-flung areas where they could afford the rent.” One long-time resident of a newly gentrified Portland neighborhood expressed these feelings about the decidedly mixed blessing of gentrification:

We never envisioned that the government would move in and mainly assist Whites. They came in to the area, younger Whites. [The Portland Development Commission] gave them business and home loans and grants, and made it comfortable and easy for them to come. They didn’t come in ‘[w]e want to be part of you.’ They came in with the idea, ‘[w]e’re here and we’re in charge’ . . . . This thing that happened in the last ten years has been most disappointing, most uncomfortable. It’s like the revitalization of racism.

V. CONCLUSIONS

It is useful to revisit here the two questions raised earlier in section III.D. Dealing with the second question first, the experience in Portland, and the Albina neighborhood in particular, seems to indicate that even relatively very successful anti-sprawl approaches cannot, on their own, guarantee a complete fix for

145 Id.
146 Id. at 21 (“The decline was largely because Blacks sold their homes in Irvington, the most affluent neighborhood in Albina.”).
147 Id.
148 Id. at 19 (quoting “Charles Ford, a Boise resident since 1951”).
sprawl-related segregation and an unfair housing problems. Even stepping back from the examples of Albina and Portland, this makes sense. Sprawl is a complex problem, and even Oregon, which was lauded for its anti-sprawl initiatives, has not completely eliminated sprawl, or problems that seem to be associated with sprawl, such as traffic congestion. Furthermore, segregation itself is a deeply complex problem. It is intrinsically linked with sprawling development, but other factors have also gone into the complicated causal mix. To suggest that “simply” eliminating sprawl could eliminate segregation is to underestimate entirely the complex nature of segregation. Addressing one cause on its own is unlikely to be enough to turn around the entrenched social trend towards residential segregation. African-Americans have done badly out of the segregationist status quo for sixty years. It is certainly possible that, if care is not taken to avoid it, African-Americans could also do badly out of a new, un-sprawled state of affairs.

This suggests that the convergence of interests between environmental, desegregation and fair housing anti-sprawl campaigners is not complete. However, the considerable shared interest should not be minimized either. This leads back to the first question: whether it is strategically, and in principle, wise for desegregationist interests to allow themselves to be subsumed within a higher profile environmental anti-sprawl platform. The ambivalent answer to the second question helps to suggest an answer to the first. That is, even perfectly executed environmental anti-sprawl measures cannot guarantee desegregation or fair housing. But that does not mean those aims are impossible, or are not linked with anti-sprawl measures.

The current historical moment is one in which there is real awareness about issues of sprawl. Even if most of that publicity comes from an environmental crisis, desegregationist interests can still, non-cynically, make the most of a general political openness to anti-sprawl discussion and action. But it is important that desegregation and fair housing interests are voiced, and specific policies targeting those aims are implemented as part of a wider and general anti-sprawl approach.