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Anti-Development Trends in the United States

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REPORT

ANTI-DEVELOPMENT TRENDS IN THE UNITED STATES

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INTRODUCTION

In the 19th century, America's Manifest Destiny was to conquer the open spaces of the west and develop the nation from ocean to ocean. Since its birth, America has always been a nation deeply centered around growth of all types—economic, social, and political. Americans, unique among the peoples of the world, have always been driven by an ethic of growth, a view that expansion is not only beneficial, but positively necessary. The nation has grown fiercely and quickly by expanding across and filling up a continent with unheard of rapidity, and continually finding new places and new ways to grow.

As it has been for some time, our Manifest Destiny is virtually complete. Our continent is filled, our cities and states populated, our open spaces increasingly shrunken and diminished. In fulfilling its destiny, the United States has experienced exceptional and sustained prosperity. But like all good things, this prosperity has come at a cost. In the 1980's, amidst another economic boom, Americans are starting to feel that perhaps we have grown too much. A sort of reversed Manifest Destiny is setting in—a mood that growth is no

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longer beneficial but is rather hazardous and threatening. Citizens facing severe traffic congestion, an increasingly polluted environment, and cities that are more and more overburdened as well as overcrowded, are learning to voice legitimate and coherent concerns about the pace of development. As the Urban Land Institute recently reported: "Once welcomed as a harbingger of economic and cultural well-being, new development is now viewed in many communities with caution and sometimes suspicion."[1] With the growing resentment of growth has come the inevitable reaction: cities and counties throughout the country are placing serious blockades in the way of future growth, in a variety of new and untried ways. Anti-development initiatives and anti-development sentiment are surfacing everywhere. Along with this national perception that growth is harmful, further development is facing new and more challenging threats from the traditional forces which have always worked against it.

Even advocates of growth are forced to consider the concerns expressed by these traditional forces which argue legitimately against the evils of overbuilding and the threats of a strained infrastructure and polluted environments. It would be short-sighted for development entities such as the Public Development Corporation (PDC) to ignore an issue as real as anti-growth sentiments. As advocates of sensible growth, we must be committed to addressing the concerns and providing creative and workable solutions.

In examining the results of nationwide rapid growth, we see a national development climate in which efforts toward future economic growth are becoming increasingly difficult, time consuming, and expensive. The characteristics of the anti-development forces are varied and complex, and their roots stem from a wide range of areas. The costs of anti-development initiatives are great, but as of yet unfelt. One thing is sure: the revolt against development in the United States is a widespread phenomenon. A general survey by Population Environment Balance, Inc. lends support to this proposition. It examined 1,650 communities across the country, and found that one in five communities had instituted some sort of land use controls.[2] Many of these communities also indicated that they planned on instituting growth-management strategies soon. These anti-growth

1. URBAN LAND INSTITUTE, DEVELOPMENT TRENDS 1988 13 (1988) (hereinafter DEVELOPMENT TRENDS 1988).

2. Rose, *California Towns Vote to Restrict Expansion as Services Lag Behind*, Wall St. J., November 27, 1987, at 1.

trends are not small or isolated problems.

The anti-development forces, some new and some newly resurgent, threaten future growth and pose a deep challenge to organizations like PDC who are directed to encourage and foster development. This report will examine the traditional slow-growth forces and their changing affects on the development climate. More importantly, it will examine the new anti-development forces sweeping the nation: the economic and social costs of these initiatives, their sources, future trends, as well as possible solutions. It is hoped that a better understanding of the forces in opposition to growth will better allow PDC and other groups to fulfill their important and aggressive development mandates.

I. Traditional Growth-Management and Its Continued Strength

A growth-management agenda of some strength has always existed in the United States. Traditionally, specific interest groups utilized established practices to pursue their claims against specific types of growth or to regulate the growth of certain areas. Development in America has never occurred in an entirely unlimited market; nor would such growth be beneficial. Preservationists, environmental interest groups, and zoning laws have all acted to guide and control growth. These are not anti-growth initiatives per se, because they are positive movements which ensure that growth is managed in a rational manner that ensures minimal adverse impact on valid social goals and aspirations. Development that destroys the nation's historic heritage or natural habitat is clearly unwelcome, and has not been allowed by this traditional type of growth-management initiative. What is new in the 1980's are those forms of activism which act more aggressively, in new and expanded ways, to prevent more future growth. These, and the problems they represent must be duly noted.

A. *Historic Preservation*

Historic preservation remains a potent issue, and it continues to prevent development in areas which, for historic or other interests, demand to be preserved. In Atlanta, preservationists are battling with developers over demolishing old buildings with frontage on downtown Peachtree Street. Here in New York, proposed revisions in the methodology of the Landmarks Commission are causing controversy. Clearly, historic preservation will remain an important factor in limiting future growth in designated areas. It is also clear that this is a growth-slowing factor justifiably supported by most members of the general community, including development advocacy groups like the Real Estate Board of New York (REBNY). REBNY fully supports the concept of historic preservation in New York; yet it is working to change some policies it perceives as particularly detrimental to developers.

B. *Environmental Preservation*

Environmental issues have always worked to hinder development by imposing complicated design standards, restricting development in designated areas, demanding expensive mitigation procedures, and the like. Today, these environmental issues continue to hinder development with a wider agenda and tougher strategies. In this way they continue to contribute to the current slow-growth atmosphere for developers.

The preservation of natural wetlands is a growing concern in areas where wetlands form a large percentage of the available land. Coupled with the fact that marshy, coastal land is often the only space left for large scale development of all kinds, this new concern is serving to close off large amounts of potential development. The Urban Land Institute *Development Trends 1988* report points to this fact: "Wetlands are coming into their own. They are no longer regarded as simply noisome breeding grounds for mosquitos. With this greater appreciation of wetlands has come greater conflict over their use."[3] The availability of inland properties in New York has resulted in relatively little focus on the wetlands issue, yet many other states are enacting laws to protect wetlands from development. New Jersey's 1987 law classifies wetlands by their value as natural areas, and restricts development in various ways according to this classification.[4] In Orlando, Florida, development has been dramatically curtailed because of wetlands issues. Virtually the only remaining vacant land in that area is wetlands, and because these have been protected by legislation, building on them is difficult or impossible. The wetlands issue will continue to restrict growth, especially as developers turn to these marginal areas when other lands become more scarce.

A mounting concern over toxic wastes and toxic building mater-

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3. DEVELOPMENT TRENDS 1988, *supra* note 1, at 18.
4. *Id.*

ials is making development more expensive and land acquisition more risky, thus working to slow growth. Asbestos is a critical issue, especially in New York. As of April 1, 1987, no building in the city can receive a permit for alterations unless it is inspected for asbestos. If the substance is found an abatement plan must be agreed upon. Since the cost of removal is very high, at $10 to $30 per square foot, the renovation of older buildings—an important infill procedure in space-starved New York—may become economically unfeasible.[5]

Asbestos is not the only material whose required removal makes development more costly and difficult. The federal Superfund Act of 1980,[6] and to a slightly lesser degree its 1986 equivalent,[7] holds past and present owners of toxic waste sites liable for their cleanup—whether they polluted them or not.[8] In New Jersey, the Environmental Clean up Responsibility Act[9] of 1983 requires the removal of toxic wastes and the testing of all land before construction begins. The risks, expense, and costs of delay which these acts bring to developers all work to make development harder. PDC has experienced the difficulties of toxic removal and testing directly: The Air Cargo Park is in the midst of toxicity testing which, according to the *Industrial Development Strategy* report, "in the worse case could prevent its cost-effective development."[10]

Environmental concerns are also expanding into new, previously ignored areas, working to slow development further. Acquifiers—underground water supplies—are increasingly coming under the attention of environmental groups and the federal government as targets of possible pollution. In San Antonio, city leaders are considering a moratorium on development over their acquifier, a measure which development interest groups (who have taken voluntary mitigation precautions) are fighting fiercely.[11] San Antonio worries that because of its sheer lack of knowledge about its acquifier, it is inadvertently harming it.[12] As many cities depend on underground

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5. Guenther, *New York Builders See Woes in New Asbestos Cleanup Law*, Wall St. J., Mar. 25, 1987, at 33.

6. Pub. L. No. 96-510, 94 Stat. 2767.

7. Superfund Act of 1986, Pub. L. No. 99-499, §1, 100 Stat. 1613.

8. DEVELOPMENT TRENDS 1988, *supra* note 1, at 18-19.

9. 1983 N.J. Laws ch. 330 (West).

10. NEW YORK CITY PUBLIC DEVELOPMENT CORP., INDUSTRIAL DEVELOPMENT STRATEGY REPORT 115 (1988) (hereinafter INDUSTRIAL DEVELOPMENT STRATEGY REPORT).

11. Celis, *Building Atop Water Supplies Raising Safety Issues in Cities*, Wall St. J., June 24, 1987, at 29.

12. *Id.*

water supplies, protection measures for this newly-considered resource could slow development nationwide.

C. *Zoning*

Like historic preservation and environmental pressures, zoning laws have traditionally worked to manage growth. Today, zoning is being used in a way that further hinders further development. A more complex use of zoning is to be expected from communities concerned with quality of life issues.[13] For example, cities are now utilizing zoning laws to protect the views of natural scenery from downtown areas. Denver recently won a lengthy court battle to preserve its right to zone against a building that would have obscured the city's view of the Rockies.[14] Texas and Seattle are also both enacting zoning laws to ensure that the beauty of their outlaying areas can be seen.[15] Zoning, an old form of development control, is now being used in even more sophisticated ways to slow future growth.

D. *Land Costs*

Another previously unfaced problem is cropping up for developers. In the past, land was merely costly; now, it is nearly impossible to obtain at all. The problem is particularly acute here in New York.

According to the *Industrial Development Strategy* report, "there is not enough city-owned property for the city to effectuate a strategy of retaining businesses in New York by offering available sites in the outer boroughs. Although PDC is in the process of creating new industrial space, this is not nearly sufficient to meet the perceived demand."[16] At the risk of oversimplification, it is easy to say that real estate development is impossible without the land to put it on, or that growth is impossible without the space to locate businesses in—yet both are of course true. The lack of space within the city forces PDC and private developers either to focus on more marginal sites where the cost of development is greater, or to examine sites which require the condemnation or dislocation of existing residents and businesses. This increases the social costs of growth. Scarce and expensive available land is an on-going problem for de-

13. Wofford, *Significant Trends Affecting Office and Industrial Real Estate*, 1987 THE APPRAISAL J. 94, 102.

14. Celis, *More Cities Pass Zoning Laws To Keep Local Sights in View*, Wall St. J., July 22, 1987, at 23.

15. *Id.*

16. INDUSTRIAL DEVELOPMENT STRATEGY REPORT, *supra* note 10, at 106.

velopers and it is another factor of growing potency that works to slow development.

II. New Forms of Anti-Development Initiatives

So far this report has examined the old forms of slow-growth devices which have recently been operating with increased vitality: preservationism, environmentalism, zoning, and land scarcity. These, however, do not entirely characterize the anti-development climate existing today. There exists today a powerful slow-growth agenda is dominated by a new form of anti-development initiative: a bi-partisan, massively popular, widely supported, and largely suburban movement by citizens angry at growth and ready to stop it. The people working against growth are no longer just environmentalists, but representatives of many interest groups and organizations: Republicans, Democrats, business and government leaders. They are largely middle class and are fighting growth *not* as an abstract idea, but as an invidious force which they feel attacks their lives and harms them personally. The anti-growth movement today is a popular and grass-roots movement. The target is not the federal government, nor even so much the states, but rather the municipality which feels the pressure and grants anti-development laws. The groups are formidable opponents for developers, and have been extremely successful across the nation. The result of their success is a whole range of specific slow-growth measures, which together form the backbone of today's anti-development climate. The result, too, is what Andrew Reinbach in *Barron's* calls a "new game" for real estate developers, "characterized by design controls, restrictive zoning, linkage to social or infrastructure goals and a general scaling down of future growth."[17]

A. *Exactment Fees*

The first and most significant anti-development initiative arising out of the new organized antipathy to growth is the exactment or impact fee. These fees are variously called linkage programs, proofers, abatements, or, as Anthony Downs in *Buildings* states, "just plain extortions."[18] In a 1985 survey by the National Home Builders Association, almost 58 percent of the communities questioned reported that they used exactment fees of one form or an-

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17. Reinbach, *Cities Clamp Tough Rules on Downtown Builders*, Barron's, Dec. 2, 1985, at 81.

18. Downs, *Commercial Real Estate Forecast 1988*, BUILDINGS, Jan., 1988, at 54, 56.

other.[19] The fees take the form of give-backs by a developer in return for municipal permission to proceed with development. A developer may be required to improve the public infrastructure surrounding his site, contribute money to specific city programs, or invest in less attractive areas in need of further development. The implementation of exactment fees, notes Larry Wofford in *The Appraisal Journal*, stems from government concern "about the cost of providing necessary services to real estate development and the problems created by development."[20] New development strains infrastructure and often has negative environmental impact.

By forcing a developer to mitigate the public costs of construction plans, the exactment fees offer a politically palatable alternative to an increase in local taxes.[21] Often, however, the use of impact fees is unsystematized, resulting in a situation where developers must engage in horsetrading with municipalities to get approval for projects. Los Angeles' new $23 million art museum was won as a concession from developers who wished to build a $1.9 billion office complex.[22] San Antonio approved construction of a new Hyatt Hotel only on the condition that the developers provided favorable terms for a group of hispanic investors to buy into the project.[23] The lack of predictability in the development process stemming from case-by-case negotiating is often enough in itself to drive new investment away.

The use of impact fees is popular in cities both large and small. Smaller communities usually assess impact fees for home building. Loveland Colorado, for instance, charges a "buy-in fee" of $7,800 per new home built.[24] Towns across the country are beginning to charge for emergency medical services, parks, and even for the new space required in city halls to administer for a growing population.[25] In many large cities, the municipality charges a specific dollar amount per square foot of developed space. The money is then targeted for various programs. The formalization of fees has often

19. Schmidt, *Developers Paying New Fees for Public Services*, N.Y. Times, Oct. 31, 1985, at A18.

20. Wofford, *supra* note 13, at 101.

21. Thomason, *Suburban Sprawl: How Counties Cope*, AMERICAN CITY & COUNTY, July 1986, at 56.

22. Waldman, *Cities Are Pressured To Make Developers Share Their Wealth*, Wall St. J., Mar. 10, 1987, at 1.

23. *Id.*

24. *Towns and Cities Charge Developers More to Cover the Cost of Growth*, Wall St. J., Oct. 2, 1986, at 1 [hereinafter *Towns*].

25. *Id.*

brought with it an expansion of their scope. Cities that in the past charged simply for sewer improvements now also assess fees for day care programs, cultural events, and similar programs.[26]

Examples of large cities with formalized linkage programs abound. Urged on by voter pressure, Hartford, Seattle, and Chicago are all strongly considering a policy of forcing exactments from developers.[27] Chicago's proposal consists of levying a fee of $5 per square foot of space in buildings exceeding 100,000 square feet, dividing the revenues collected among the city's seventy-seven wards, and allowing the voters of each ward to decide what to do with their share of the money.[28] Boston's impact fee requires developers to pay $6 a square foot on buildings over 100,000 square feet.[29] Payments can be spread out for seven years and must begin on the first day of construction.[30] In addition, Boston requires that developers hire Boston residents, and encourages the employment of minority groups. The city also operates a "Parcel to Parcel" linkage program, whereby it provides developers choice parcels of downtown land in exchange for their development of land in underdeveloped neighborhoods.[31] Lastly, Boston has implemented a strict downtown growth control plan called the Interim Planning Overlay District (IPOD). This limits the height of new building to 300 feet until 1989, and closes off all but three percent of the downtown area from future development.[32] While not an exactment fee, IPOD is an important part of Boston's overall anti-development legislation.

Boston's assessment of an impact fee is an attempt by the city to alleviate what Brook Larmar in *The Christian Science Monitor* calls the "paradox of growth."[33] Even though the downtown boom has brought large amounts of new investment into Boston, it remains a city with great pockets of poverty (20.2 percent of its citizens were below the poverty level in 1980).[34] With the money from the exactment fees, Mayor Flynn hopes to create a job training program for

26. *Towns, supra* note 24, at 1.

27. Waldman, *supra* note 22, at 1.

28. *Id.* at 25.

29. Larmar, *Boston Tightens Rules That Get Developers To Help Pay For Solving Urban Problems*, Chris. Sci. Mon., Dec. 9, 1985, at 5.

30. *Id.*

31. Brown, *Boston*, in CITIES REBORN 14, 27 (R. Levitt ed. 1987).

32. Megathlin, *Boston: A Commentary*, in CITIES REBORN 11, 13 (R. Levitt ed. 1987).

33. Larmar, *supra* note 29, at 6.

34. Economou, *Pittsburgh*, in CITIES REBORN 110, 122 (R. Levitt ed. 1987).

those persons passed over by the economic expansion.[35] Although developers have largely accepted the program as the cost of doing business in Boston, it is the kind of initiative many of them resent. They persuasively argue that recent development is not the cause of Boston's housing and employment ills, and that the development community should not be singled out to shoulder the burden.[36] Further, they argue that exactment fees are symbolic gestures designed to mollify certain activist groups, and thus developers should not be made to pay them, since they cannot solve the problems they are designed to address. Exactment fees cannot work, notes Anthony Downs in *Buildings*, "since they cannot gain enough scale to come anywhere close to solving the problems to which they are aimed."[37] While the objections of the development community are noteworthy, the use of impact fees by Boston and other communities will continue, and remains a strong disincentive to further development due to the cost and bureaucratic delay it imposes upon developers.

B. *Moratoria, Legal Restrictions, and Voter Initiatives*

The second type of anti-development initiative, stemming out of the new popular resistence to growth, is the ballot measure or other legal device, whereby voters pressure municipalities into enacting moratoria or legal restrictions on further development. These restrict development outright, rather than providing financial disincentives, as with the exactment fee. Boston's IPOD, taken separately from its linkage requirements, is such a program. Another example is when "NIMBY" ("Not in My Back Yard") groups pressure governments to halt projects through legislative decree and local law. The wide range of anti-development initiatives of this type are all local plans to legally restrict development by outlawing or controlling it. Like exactments, these sorts of legal restrictions are widespread. It is interesting to note that 43 percent of the participants at the 1987 Urban Land Institute meeting in Los Angeles reported moratoria in the areas where they invested. In the widest sense, the initiatives indicate a trend "for a developer's plans to be subject to 'discretionary approval' by local government."[38]

The impetus for legal restrictions on growth comes directly from

35. Larmar, *supra* note 29, at 6.
36. *Id.*
37. Downs, *supra* note 18, at 56.
38. *Laws Limit Developers*, INDUSTRY WEEK, January 26, 1987, at 25.

citizen groups opposed to development, mostly in suburban areas.[39] According to Larry Wofford, writing in *The Appraisal Journal*, "[m]uch of the interest in land use controls stems from citizen awareness of the effects of new projects and a realization that projects can be stalled or prevented by citizen action."[40] The easiest way for voters to use their power against development interests is for them to throw out of office those public officials sympathetic to growth. In 1987, Los Angeles voters replaced the pro-development City Council president with an unknown who supported sharp anti-growth restrictions. Disaffected voters have also put the Mayor of Los Angeles, Tom Bradley, in political jeopardy. Usually sympathetic to growth, Bradley has had to alter his stance on the development issue to appease his detractors.[41] Besides threatening politicians, anti-development advocates argue for moratoria or down-zoning of growth. Citizens either pressure governments directly to enact these measures or propose them through ballot initiatives. The latter is a popular tool in California, where ballots are easy to put before voters.[42] It is also an effective one—fifteen of the seventeen no-growth measures put to California voters in 1987 were approved.[43]

There are many examples of moratoria imposed by voters. To date, they are largely a suburban phenomena, for it is in the outskirts of cities where resistance to development is often strongest. However, many feel the future will find this controlling tactic closer to our inner cities.[44] Many California towns have imposed moratoria of one form or another: places like Oceanside, Tiburon, Palo Alto, and Mill Valley all have them.[45] Legal restrictions are prevalent in cities, too. Santa Monica, Seattle, and Minneapolis all have restrictive city plans.[46] Even staid industrial cities in the northeast, like Worchester, Massachusetts, are imposing moratoria in their outlying districts.[47] But perhaps the two most dramatic examples of municipal moratoria on growth are in San Diego and Los Angeles. San

39. Rose, *supra* note 2, at 1.

40. Wofford, *supra* note 13, at 101.

41. *See* Rose, *supra* note 2, at 1.

42. Hull, *Not In My Neighborhood*, TIME, Jan. 25, 1988, at 24, 25.

43. Rose, *supra* note 2, at 1.

44. *See* Downs, *supra* note 18, at 54, 56.

45. Schreiner, *Putting on the Brakes*, AMERICAN DEMOGRAPHICS, Jan. 1988, at 54.

46. Reinbach, *supra* note 17, at 81.

47. *Worcester Acts to Curb Boom Along Outskirts*, N.Y. Times, Dec. 28, 1986, at 42, col. 1.

Diego voters have given themselves the right to approve each and every new construction project within the city.[48] In addition, San Diego has become the largest city in the country to attempt to limit its own population. Spurned on by a deteriorating quality of life, the San Diego City Council in 1987 voted to limit new housing starts to only 8,000 units a year. That represents about one half of the new homes built in San Diego in 1986.[49]

In November 1986, Los Angeles voters, by more than two to one, passed into law Proposition U. This growth restriction halves the maximum building density on 85 percent of the city's available commercial and industrial land.[50] Previously, developers could put up buildings at densities of three times the square footage of the lot. Now, they can build at densities only 1.5 times the square footage. This is not all that Los Angeles is doing to control growth. Los Angeles county schools levy an exactment fee of $1.50 per square foot of residential space and twenty-five cents per square foot of commercial and industrial space, to help fund new school facilities.[51]

Los Angeles also faces a new sort of slow-growth initiative, called the Interim Control Ordinance. This is, in effect, a partial moratorium, and prohibits only certain kinds of building rather than stopping construction altogether. The city has twenty-seven such ordinances, with at least twelve others in the approval process. The ordinances are an easy way for neighborhoods to stop development they do not like until permanent zoning changes can be put into effect. Like other California cities, Los Angeles is creating a difficult and expensive climate for developers wishing to see new growth.

C. *San Fransisco's Growth Controls*

Of all cities, however, San Francisco, is best known for its growth controls and anti-development sentiment. It has set in place a wide range of restrictive measures, including moratoria and exactments of such scope and severity that are halting virtually all development within the city. The first city to use the exactments and legal restrictions, which have become models for other municipalities, San Francisco has also come up with the most creative and extensive use

48. Rose, *supra* note 2, at 1.

49. Lindsey, *San Diego Works to Curb Its Sunny Growth*, N.Y. Times, June 28, 1987, at 20.

50. *Workshop Focuses on Restrictions in West Coast Cities*, NAT'L REAL EST. INVESTOR, Dec., 1987, at 37 [hereinafter *Workshop*].

51. *Laws Limit Developers*, *supra* note 38, at 25.

of growth control measures, and has used them more restrictively than any other city in the nation. The consequences for San Francisco will be correspondingly severe.

San Francisco pioneered the use of impact fees. In 1981, it first assessed an exactment from developers of office buildings over 50,000 square feet of $5.34 per square foot of new space, to fund a city program that assists first time home buyers.[52] It has collected from developers over $24 million in the last five years of this program.[53] Also in 1981, the city assessed an additional fee of $5 per square foot to go to improvements in the city's public transit system. In 1986, it added additional linkage exactions totalling $6 per square foot for public art, open space, and child care.[54] The total bill to developers amounts to $16.34 per square foot—clearly a substantial disincentive for further development.

But the real strength behind San Francisco's anti-development agenda is its "Downtown Plan of 1985," and further restrictions voters have placed on top of this already severe measure. The plan, writes Cheryl Sullivan in *The Christian Science Monitor*, "was intended to strike a balance between high-rise development and quality of life."[55] It appears rather to be seriously lopsided and biased against future development. The downtown plan lays strict groundrules on architecture, wind, and sunlight patterns. It puts an annual cap of 900,000 square feet on new development in the downtown area until 1989, restricts any future development to an area south of Market Street, and requires developers to supply lists of all employees broken down into racial, economic, and age categories.[56] This is all in addition to the exactment fees already mentioned.[57] San Francisco voters, unappeased even by the limits set by the plan, went further and enacted Proposition M. This ballot measure further reduces the total square footage of allowable development to 475,000 square feet per year (one medium-sized office building).[58] Moreover, it applies added restrictions to smaller buildings than those originally covered in the plan, and makes the restrictions on building develop-

52. Waldman, *supra* note 22, at 1.

53. Larmar, *supra* note 29, at 6.

54. Waldman, *supra* note 22, at 1.

55. Sullivan, *San Francisco Downtown Plan Gets Bad Reviews*, Chris. Sci. Mon., Sept. 29, 1986, at 8.

56. Reinbach, *supra* note 17, at 81.

57. *Id.*

58. Guenther, *California Initiatives Dampen Outlook for Building Projects*, Wall St. J., Dec. 24, 1986, at 11.

ment *permanent*.[59]

The results for developers so far have been dramatic. Building construction has, of course, slowed considerably, but the process by which buildings can be approved has also become absurdly complex. Because the city council must now approve all new construction projects, developers have accused the system of becoming a "beauty pageant." For example, three buildings came up in 1986 in competition for the available space. Since the city council has so little space to allocate, it has become extremely careful about what it approves. The result was that all three projects were rejected. The city ruled that the available space could be carried over in the next year, so that 950,000 square feet were available for 1987. Three out of five projects that competed for this space were approved.[60] The first developer to hurdle this torturous approval scheme was Michael D. Barker, who won approval in September 1987 for a 500,000-square-foot office tower. Barker estimates that in Houston, the design costs for his project would have amounted to $100,000. In San Francisco, his tower went through six redesigns and four different tops before it was finally approved. The price: $1.2 million in design and $4 million in carrying costs, over *fifty* times the cost of developing in a city like Houston without strict controls.[61] Clearly, this is a profound and dramatic disincentive for future developers to seek projects in the San Francisco area.

Barker asserts that San Francisco's design controls are strict to the point of being "oblivious to the economics of development."[62] It is difficult to disagree with such a statement, especially in a city which competes with Los Angeles for its share of commercial and financial markets. Barker adds: "To me, it sends the worst message to business: We'd just as soon you go to Los Angeles."[63] These concerns are real and necessary for San Francisco's executives and planners. San Francisco (a city which has on the average absorbed 1.5 million square feet of office space a year, and is now limited to a mere 475,000) has begun to feel the pinch of its adopted anti-development position.[64] The city is experiencing a $180 million budget

59. Lindsey, *California Voters Calling Holt to Uncontrolled City Growth*, N.Y. Times, Nov. 15, 1986, at 1.

60. *Workshop*, *supra* note 50, at 37.

61. Reinbach, *supra* note 17, at 81.

62. *Id.*

63. Guenther, *supra* note 58, at 11.

64. Guenther, *San Francisco's Growth Curb: But Will Other Cities Follow?*, Wall St. J., Mar. 5, 1986, at 35.

shortfall in the present fiscal year, which represents twenty percent of its general fund. Although it is too early to tell for sure, some argue that the reduced tax revenue stemming from San Fransisco's anti-development and anti-business climate is the cause of the operating deficit, which must be balanced by local law. The present glut of offices on the San Francisco market which has made this potentially harmful plan feasible was caused by the same spate of overbuilding that initially promoted this city to enact the plan. The city's office vacancy rate was 13 percent in 1986, and has since climbed further. It was at 0.1 percent in 1981. The glut, at current absorption rates, may take 6 to 7 years to clear off. It made acceptance of San Francisco's anti-development policies relatively easy, since little new development would have occurred anyway. Developers, however, blame talk of implementing the downtown restrictions as causing the over-supply in the first place—there was such fear in the development community about the impending restrictions, they say, that they put anything in the ground just to beat the deadline.[65] When the office glut finally does wear down, San Francisco will find itself with a growth policy that is economically withering and clearly unworkable. The budget crisis, already perilous to the city's fiscal health, will only get worse as the corporate exodus worsens and further erodes the tax base. The costs of its strong anti-growth attitude will then become painfully obvious.

III. Costs of Anti-Development Initiatives

In reviewing the plethora of old and new slow growth devices currently operating across the country, several things become clear. The severity of San Francisco's program indicates the potential costs of the adoption of these programs for the communities which have embraced them. The costs of an anti-development climate, especially for a nation which has cherished and continually renewed its commitment to growth, are great and widespread. These issues will now be examined in greater detail—but it is clear from the outset that America will not avoid paying for its currently fashionable rejection of growth.

A. *Inflation and Unemployment*

The various anti-development devices, by charging developers, by imposing legal restrictions, and by making the approval process

65. *Id.*

more costly and lengthy, affect the development industry in one basic way: they result in "higher costs and reduced construction of residential, commercial, industrial and research facilities."[66] The consequent effects of increased price and reduced supply on regional economies can be serious. According to San Diego's Construction Industry Federation, the 50 percent reduction in housing production forced by the recent moratorium will not only seriously reduce jobs in the construction industry, but will also have a ripple effect throughout the rest of the economy. For every job lost in construction, three or four will be lost elsewhere in the community.[67] The ultimate result, according to a 1987 study by the San Diego Association of Governments, is that housing prices will rise by $10,000 per unit, and unemployment will increase by as much as two percentage points.[68] The inflation in housing prices is inevitable, says Sanford Goodkin, a pro-growth advocate and consultant in San Diego, because of "continuing employment and natural population increases"[69]—rising demand—in the face of a legally restricted supply. Since housing is one of the basic durable goods traded within the economy, the inflation of housing prices is likely to bring the general increase in the inflation rate mentioned above. The evil twins of unemployment and inflation, finally thought conquered in the early 1980's, will be faced again as moratoria against future growth spread throughout the country.

B. *Housing*

Nowhere is this problem more acute than in the housing industry, where restrictions against further building will have their most harmful social consequences. Growth controls, by turning residential home sales into a seller's market and raising housing and rental costs, are killing people's dreams of buying a home. According to a 1988 report by the National Housing Task Force, homeownership for first time buyers "is becoming a fading dream as a result of high real estate mortgages rates, rising home prices, and substantial down- payment requirements."[70] In 1978, almost forty-five percent

66. *Laws Limit Developers*, *supra* note 38, at 25.

67. Lindsey, *supra* note 59, at 20.

68. DEVELOPMENT TRENDS 1988, *supra* note 1, at 14.

69. Goodkin, *Density: The Voter's Biggest Ignorance*, S.D. Daily Transcript, Feb. 2, 1988.

70. Suchman, *Renewing the Nation's Commitment to Housing*, URBAN LAND, June 1988, at 3, 4.

of all homeowners were between the ages of twenty-five and twenty-nine. Today, only slightly over thirty-five percent of young people in this age group can afford to own a home — a ten percent drop in only one decade.[71] No-growth initiatives aimed at residential markets will only exacerbate this downward trend, serving to inflame what is already a costly national crisis.

C. *Social Costs*

Anti-development sentiment often has a high social cost as well.[72] In many instances, no-growth initiatives espoused by the residents of wealthy, suburban communities mask a subtle but invidious form of elitism and racism. By their very nature, slow-growth policies are prejudiced against future generations, who will have difficulty living in the costly communities that current residents are creating for their own benefit. Even worse, the economic distress caused by slow growth in housing and other areas will leave future generations at greater risk to homelessness, unemployment, and a variety of other social ills. This is reflected already in the declining homeownership rates of young people. By restricting growth, the nation loses its capacity to accommodate future needs; the potential future costs of anti-development sentiment—as of yet unmeasured—are tremendous.

Slow growth has elitist and racist overtones even in the present. To critics of anti-development like Sanford Goodkin, moratoria and similar measures amount to "little more than a thinly veiled effort by affluent and largely white neighborhoods to exclude strangers while boosting the value of their homes."[73] Goodkin claims that slow-growth will hurt the less fortunate the most, cutting investment and jobs in poorer neighborhoods where it can be least afforded.[74] The rising prices of homes in suburban areas caused by legal restrictions on growth are clearly keeping moderate and low income groups from living in these areas. This prevents the children of these parents from "enjoying the benefits of the high quality educations found in most suburbs."[75] By dividing communities through increasing costs along

71. *Id.* at 3.

72. *See* Case and Gale, *Henry George Wouldn.t Be Big on Today,s Growth Controls*, Wall St. J., Mar. 3, 1988, at 16.

73. Hull, *supra* note 42, at 25.

74. *Id.*

75. Downs, *Developers Have to Face Politicization of Real Estate*, NAT'L REAL EST. INV., Apr. 1988, at 34, 144.

class lines, anti-growth initiatives can only enhance social tension and inequality—and it is clear that attitudes concerning growth are a reflection of socio-economic status. According to the "1988 State of the Neighborhoods Report" by the Citizens Committee for New York City, only seven percent of leaders in low income neighborhoods thought there was too much development in the areas where they lived; 62.2 percent said there was not enough. In high income neighborhoods, 45.3 percent said there was too much development, while only 6.6 percent said there was too little.[76] Although this figure undoubtedly reflects the fact that more development occurs in more established areas, the municipal-wide restrictions that the well-off enact against growth affect *all* citizens, hurting the chances for potential development that low income leaders perceive is badly needed. By creating a gulf of perception and potential between income groups, anti-growth initiatives exact high social costs and hinder important national efforts at achieving the equality of opportunity Americans deserve as a right.

D. *Business Costs*

An anti-development climate in a community imposes high costs for businesses, as well as for would-be residents. Some business leaders and local officials worry that even mild growth restrictions can chill an area's business climate by fostering the impression that "local government is out to soak corporations."[77] By increasing costs and reducing choices for developers, anti-development movements work to increase industrial and commercial rental rates and restrict the choices of businesses as to where to operate. According to Andrew Reinbach in *Barron's*, this "threatens to send more businesses scurrying to lower-cost suburbs . . . undercutting urban tax revenues and employment."[78] It may drive marginal businesses with low profits out of operation completely. Clearly, anti-development initiatives work to exacerbate the very trends that economic development entities like PDC are trying to reverse (*e.g.* declining urban manufacturing and employment bases, lowered market vitality and regional leadership). For example, big development firms are already withdrawing from San Francisco markets,[79] and San Francisco will have

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76. CITIZENS COMMITTEE FOR NEW YORK CITY, 1988 STATE OF THE NEIGHBORHOODS REPORT 15 (1988).

77. Waldman, *supra* note 22, at 1.

78. Reinbach, *supra* note 17, at 81.

79. *Workshop*, *supra* note 50, at 37.

to begin thinking about how it competes economically with surrounding areas. Los Angeles' potential position as the capital of the burgeoning Pacific Rim economy may also be threatened by its lack of interest in future development.[80] An anti-development community is also very much an anti-business community, at great cost to its residents in terms of its employment opportunities and tax base.

E. *Costs to the Development Community*

Lastly, slow-growth initiatives are tremendously costly to the development industry, a large and important sector in the national economy. The irony of growth control is that it is often initiated by citizen groups angered by the apparent size, wealth, and success of developers operating in their communities. The result of growth control, however, produces exactly that which the activists resent: "real estate markets characterized by soaring property values and a general bidding-up of the entry cost to downtown development that limit the game to the big builders the most rabid no-growthers detest."[81] No-growth activists perceive monoply profits being made in the development industry, but the cost and complexity of the restrictions they impose only serve to consolidate the industry further, encouraging the massive profit of monoply that really does not exist in the first place.[82] Since it is not uncommon for a developer to spend two years and hundreds of thousands of dollars before discovering whether a project can even be initiated, only developers with ample resources, strong commitment, and careful planning can survive in an anti-growth environment.

It is clear, then, that what Anthony Downs in *The National Real Estate Investor* calls the "politicization of real estate"[83] favors large developers who can spread overhead, utilize specialized staff, and maintain backup resources. Mr. Downs further points out that it is not really the small-scale developer who is hurt by no-growth, for his projects are usually too small to attract community resistance or come under moratoria or exactment guidelines. It is rather the middle sized developer who is squeezed out—the projects fall within the scope and legal framework of anti-development initiatives, but he himself is neither large nor specialized enough to withstand the cost

80. *Laws Limit Developers*, *supra* note 38, at 25.

81. Reinbach, *supra* note 17, at 81.

82. Case and Gale, *supra* note 72, at 16.

83. Downs, *supra* note 75, at 34.

and delay anti-development brings.[84] Clearly, the loss of the development community's "middle class" is another of the costs of slow-growth. The ideal development industry is one that is diverse, with many areas of specification and expertise. Anti-growth works against such a positive model for developers, and renders this essential segment of the economy less attractive and dynamic.

IV. Sources of Anti-Development Sentiment

We have looked at the various forms, new and old, that the slow-growth movement is taking in the 1980's. We have also seen the tremendous costs of anti-development. To understand anti-growth movements, however, we must also explore those factors which have caused them to exist in the first place. Slow-growth is exceptionally strong today because of the unique problems from which the movement is derived; to understand these issues is to better understand the power of the argument that advocates of growth are currently battling.

A. *Infrastructure Problems*

Anti-development sentiment has arisen first and foremost from the decay in infrastructure and the great stress it is currently under from recent rapid growth. When infrastructure is strained, people see new development as an enemy because new buildings can only mean new burdens on public services. The Urban Land Institute *Development Trends 1988* report notes: "The most fundamental rationale for controlling development in most communities . . . is coordinating the provision of infrastructure with development. It seems that 'quality of life' for many people means maintenance of satisfactory levels of traffic movement, water supply, waste water treatment, and other essential services."[85] More than any other factor, the nation's strained infrastructure is creating a crisis for developers.

Infrastructure worries have hit both cities and suburbs, but it is in the bedroom communities outside the central metropolitan core that these worries have ignited most fiercely into anti-development sentiment. Cities have long since been accustomed to strained infrastructure—and the exactment fees they impose are one attempt to mitigate this continuing problem. Opponents of growth in urban areas continue to use infrastructure strain as a powerful example in

84. *Id.* at 143.
85. Development Trends 1988, *supra* note 1, at 14.

arguing against future growth—it is a significantly valid concern which promises to gain further credibility as cities continue to build while relying on existing infrastructure. But for the suburbs these problems are new and alarmingly regressive. Notes Larry Wofford: "[m]any suburban communities are experiencing the very problems that caused their residents to leave the cities . . . because the suburbs are becoming cities as they mature."[86] Since the Second World War, most of the nation's growth has occurred in suburban areas. While the nation's population rose twenty-six percent between 1960 and 1980, the population in suburban areas nearly doubled.[87]

The deterioration and decay of urban infrastructure serves as a lesson for more suburban locales. Because suburbanites traditionally loathe the population density reminiscent of city life, growth has occurred in an "urban sprawl" with new development pushing continually outward into once-rural areas, where infrastructure is lacking.[88] This has created a "gap between the demand for public services and their availability," notes Sharon Thomason in *American City & Country*.[89] The conflict over infrastructure has thus fueled anti-development sentiments in the suburbs far greater than in the cities, where fundamental public services are at least available. This problem is only exacerbated by the fact that public works spending, instead of rising with population growth, has declined from twenty percent of total government expenditure in 1950 to less that seven percent in 1984.[90] With less money available, the national infrastructure is worsening just as it is coming under higher demand.

Infrastructure troubles are diverse, and vary according to the areas in which they are located. All, however, have lead to growth moratoria and new limits on developers. In Florida, the school system is in a major crisis because of huge population growth. The state estimates it must build 933 new schools by 1998 just to keep pace with growth—but it is experiencing difficulty finding the money to pay for a building program.[91] The suburban counties of Atlanta — Fulton, Gwinnett, and Cobb—all imposed development moratoria in 1986 because of insufficient sewer capacity. But the greatest expression of our national infrastructure problems is also the single factor

86. Wofford, *supra* note 13, at 101.
87. Rose, *supra* note 2, at 5.
88. Thomason, *supra* note 21, at 58.
89. *Id.*
90. Clinton, *America is Bucking and Leaking*, N.Y. Times, June 24, 1988, at A31.
91. Garcia, *Florida's Growing Pains*, TIME, Jan. 25, 1988, at 25.

that has lead more people to become "anti-growthers" than any other: traffic congestion. In many suburban areas like Orange County, California, traffic is worse than it is in major cities.[92] The average rush hour freeway speeds in Orange County are currently thirty-six mph; they are expected to plunge to an absurd ten mph within the next twenty years.[93] In general, while the number of cars and trucks on American roads has increased sixty-three percent since 1970, the total mileage of all streets and roads has increased only five percent.[94] This gap has caused traffic congestion across the nation. Because the roadways are a very obvious form of infrastructure whose inefficiencies are maddeningly frustrating, traffic congestion has proved a powerful impetus for implementing anti-growth initiatives.

B. *Federal Cutbacks*

Another cause of the current wave of anti-development motions is the cutbacks in the federal budget brought about by the Reagan Administration. In the past, grants from Washington formed a major portion of municipal budgets for facilities and services. Under Reagan, the share of city revenues from federal grants has dropped from twenty-five percent of total budget to under ten percent today.[95] City leaders, financially strapped by the loss of federal funds, turned to developers profiting in the city environment as a source of continued revenue. Thus, in a very direct way, the exactment fee was born.[96] In Boston, the city lost $30 million for its low and middle income housing program from Reagan cutbacks.[97] Its exactment fee program provides funds for housing, but will contribute only $2.5 million a year—not nearly enough to cover the gap.[98] Federal cutbacks, then, have hurt important programs that the private sector cannot feasibly finance on its own. At the same time, they have burdened developers with added costs, thus contributing to the anti-development movement.

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92. Downs, *supra* note 18, at 56.
93. Hull, *supra* note 42, at 25.
94. Rose, *supra* note 2, at 1.
95. *Id.*
96. Reinbach, *supra* note 17, at 81.
97. Larmar, *supra* note 29, at 6.
98. *Id.*

C. *Local Tax Limits*

What the federal government has taken away, local governments have not been able to replace—this is another reason for the spreading use of slow-growth initiatives. Jon D. Hull writes in *Time*: "[i]n part, California's slow-growth movement is a product of the state's most celebrated previous initiative . . . [:]Proposition 13."[99] Proposition 13 is a symbol of the anti-tax revolt which has been representative of American political life on both the national and local levels in the 1980s. Voters on the local level, refusing to allow their tax rates to rise, have as a consequence prevented localities from spending money on the infrastructure improvements that might have been able to accommodate tremendous recent growth. The result is infrastructure strain, as well as the corresponding slow-growth initiatives and exactment fees which the development community is facing today. Clearly, the governmental budget limitations of the past decade—both in the federal government and in municipalities—have worked to hinder growth and make the process more costly for developers.

D. *Activists*

Another cause of slow-growth sentiment is the very activism that supports it. Anti-growth initiatives do not simply happen. They are presented to the public and forced on local governments by activists—often neighborhood groups representing the cause of "NIMBY"—working in the community for the cause of the anti-development movement. Activists working in the 1960s have turned their attention to the problems of urban areas, and have been arguing with great sophistication and political skill for the needs of the poor and urban dwellers.[100]

Activists have played a large role around the country in the imposition of growth controls, pressing for exactions and mitigation monies from developers. In Hartford, activists blocked highway I-84 one rush-hour morning to protest the city's lenient growth policies;[101] they have taken similar, if less dramatic, steps in cities across the country to limit growth and make developers pay. Because slow-growth is often a middle class battle cry, anti-growth activists are typically well organized with considerable resources. In both the city

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99. Hull, *supra* note 42, at 25.
100. Reinbach, *supra* note 17, at 81.
101. Waldman, *supra* note 22, at 25.

and the suburbs, activists play a major role in passing slow-growth initiatives, and are thus a major source of the anti-development movement.

V. The Nature of Growth

The fundamental cause of the anti-growth movement, and one which underlies the infrastructure problems discussed above, is the very particular way America has grown since the Second World War. As mentioned before, the majority of America's population and economic growth has occurred in the suburbs, where infrastructure is least able to handle it.[102] Christopher Leinberger in *The Wall Street Journal* calls this recent growth "a radical transformation in the structure and appearance of our metropolitan areas."[103] It has been carried out by business and the development community in a rapid and uncoordinated way. Our cities no longer consist of central, downtown business districts well connected by mass transit and highways to bedroom communities. Rather, most of our recent office, commercial, and retail development has taken place in the suburbs themselves.[104]

In Boston, for example, the downtown area in 1982 accounted for just under seventy-five percent of the metropolitan area's office space. In 1988, fifty-eight percent of the area's office space was located in the *suburbs*; clearly, the outskirts of the cities are booming much faster than the downtowns.[105] In New York City, since 1985 over six million square feet of office space has been built or newly renovated in the four boroughs outside of Manhattan — again indicating the growth occurring in the outskirts of central business districts.

What we increasingly find today in our metropolitan areas is a collection of interdependent "urban villages," with mini-downtowns scattered throughout old suburban areas competing with each other and the old central business district and other regions. Each of the 'village' focal points attracts its own businesses, stores, and commuters, in what Leinberger calls a "low-density cityscape."[106] Because these villages are new and without public transit, the traffic in and around them is intense. This, in turn, angers residents, who feel dis-

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102. *See infra* text accompanying note 87.
103. Leinberger, *Curbing Growth Controls*, Wall St. J., Jan. 12, 1987, at 30.
104. *Id.*
105. *Id.*
106. *Id.*

placed by the growth and the commuters, who must suffer with its costs. This results in calls for the slowing of growth and the prevention of further development of other "urban villages." Thus, it is the very way America has grown—pushing out into the country instead of building up central areas already served with good infrastructure—that has caused our traffic woes, and in turn sparked calls for slow-growth.

VI. Trends in Anti-Development Initiatives

What is the future for developers in this slow-growth climate? What trends can we expect from the anti-growth movement in the future?

A. *Future Expansion*

First and foremost, the use of anti-development moratoria and exactions will spread, as the movement becomes a more important and urgent voice in the nation's municipal political systems. Calls for slowing growth are expected to spread further in the West to communities concerned with quality of life issues, and to the Northeast and Midwest, where worries over strained infrastructure are great.[107] The trend, in short, is clearly toward greater public control of the development process, with the public demanding a greater say in what and where projects get built.

We can be so confident in saying that anti-development sentiment will spread because, in a real sense, it is inevitable. Within the growth that has occurred in recent years are planted the seeds of the anti-growth movement. America's suburban growth, as we have seen, brings with it the traffic and infrastructure strain that lead as a consequence to anti-growth sentiment. With the kind of growth we have been having, anti-development initiatives are inevitable. But is the resulting rapid expansion into new urban villages itself inevitable? If America is to keep growing, the answer is yes; the type of growth we have embarked on is nearly inevitable, given our national culture. The classic American dream keeps it so. Anthony Downs notes that there are three "goals that suburban residents insist upon pursuing, which inevitably generate traffic congestion."[108] First of all, Americans demand to live at relatively low densities. This forces a spreading out of housing and consequently necessitates considera-

107. Reinbach, *supra* note 17, at 81.
108. Downs, *supra* note 75, at 34.

ble commutes to the work place and prevents the economically feasible use of mass transit. Americans also want a broad combination of places to live and work, and to avoid choosing jobs or housing based on commuting time. Lastly, as Downs points out, "American commuters overwhelmingly prefer to drive their own private cars to work and back."[109] Low density housing, choice, and the private car as the commuting vehicle: all encourage the growth of suburbs as workplaces as well as residences. These particularly American characteristics thus encourage the growth of the suburbs as collections of urban villages. As a consequence, they also encourage the traffic that makes anti-growth sentiment spread. The very characteristic of Americans as they relate to growth, reveals that the future can only hold an expansion in the scope and severity of anti-development initiatives in the suburbs.

Although the suburbs face substantial opposition to growth, anti-growth activism can only increase in the cities, too. The infrastructure burdens facing large municipalities are clearly immense. Little new infrastructure can be added because of a sheer lack of space, not to mention fiscal resources. The municipalities are also criticized by groups who see all new building as adding painfully to the congestion and density that characterizes the urban landscape. Therefore, anti-development initiatives will continue to plague cities as well.

B. *Legal Issues*

Another trend to be considered is the continuing way in which the law supports the efforts of anti-development activists. The courts have traditionally protected a municipality's right to control and direct development within its borders, based on its right to zone. Two June 1987 Supreme Court decisions appeared for some time to threaten this right, to the benefit of mega-developers who prefer an unfettered development climate.[110] It appears, however, that these decisions have had little effect. Cities can continue to legally impose development moratoria and exactment fees. In *First English Evangelical Lutheran Church v. County of Los Angeles*,[111] the court ruled that property owners must be compensated for adverse consequences of regulations as these amounted in effect to governmental

109. *Id.*

110. First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304 (1987); Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987).

111. 482 U.S. 304.

takings. In *Nollan v. California Coastal Commission*,[112] the court ruled that any conditions attached to a building permit must substantially advance a valid government purpose.[113] These decisions originally caused an initial flurry of optimism in the development community, because they would force municipalities to consider the costs to developers when imposing regulations. Expert legal advice, however, has indicated they are too vague and confusingly written to be of any real value.[114] As a result, it is business as usual for the municipal agencies which administer growth controls.

C. *Renewed Commitment to Infrastructure Spending*

There are renewed calls for a greater commitment to infrastructure spending surfacing across the country. Many states have accelerated programs for the repair and maintenance of decaying roads and bridges. Additional toll roads are being considered in Southern California as an answer to that area's traffic problems. Light Rail Systems are being considered as feasible mass transit alternatives. Many areas, such as the suburban counties of Atlanta, are spending the money to provide for more roads, sewers, and similar projects.[115] A continuation and enhancement of these trends may, in the future, solve some of the traffic and capacity problems which are such important sticking-points for anti-development advocates. On the other hand, increasing infrastructure capacity may act as a vacuum, drawing in greater demand, solving nothing and serving only to create more density. Whether infrastructure improvements can really reduce infrastructure strain remains an open question—it may even prevent this alternative from becoming a viable solution to the anti-development problem.

D. *Wider-Scale and Density Planning*

Another trend is that some states and counties are moving toward wider-scale planning and a systematization of development regulations. In 1987, Illinois, Tennessee, and Texas all adopted enabling statutes which provide guidelines for municipalities in the imposition of impact fees. By setting limits on fees and requiring municipalities to have a clear case for the imposition of exactments, these statutes

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112. 483 U.S. 825.

113. DEVELOPMENT TRENDS 1988, *supra* note 1, at 16.

114. Lowenstein, *When Developers Meet, Talk Turns To 'No Growth,'* Wall St. J., Oct. 14, 1987, at 37.

115. DEVELOPMENT TRENDS 1988, *supra* note 1, at 17.

provide that impact fees will be imposed "in a more uniform, equitable, and reasonable manner . . . ."[116] In 1985, Florida put teeth in its ten year old state growth plan by threatening to withhold state aid to localities not in compliance. It now requires local plans to be approved by state officials, offering some measure of standardization across the state.[117] While exactments and local regulations will continue to be imposed, the systematization resulting from state legislation may avoid the costly project-by-project horse-trading and local idiosyncracies that have represented the worst aspects of the anti-development issue. On the other hand, it threatens to remove from the local level important planning decisions which can only be made effectively there. Wide-scale planning has the potential of harming the efforts of localities to address anti-growth concerns on their merit. Standardizing the solution to such a complex, multifaceted issue is by no means the answer.

Other areas are moving toward a partial solution to the problems of suburban sprawl. Recall that the low-density growth of the suburbs, loved by Americans as the single best way to achieve the dream of individual homeownership, is exactly the factor which leads to traffic congestion and anti-development sentiment. Boulder County, Colorado adopted a regional plan, driven by a concern that rapid growth and suburban sprawl were bringing inefficient consumption of public services (because of the great distances over which development was occurring) and a dangerous encroachment on open spaces. Boulder's plan, in response to the problem of sprawl, encourages new growth in and around existing urban centers, where infrastructure is in place and can be expanded.[118] Dade County, Florida, recently adopted a plan which seeks to preserve important agricultural land used for winter vegetable production.[119] In essence, this plan "contains" development, and is another example of a new wave of regional "in-filling" policies. Seminole County, Florida, is actually considering changing its zoning laws to allow for high- rises, in order to avoid the costs of sprawl.[120] The plans represent nothing less than an encouragement of *density* in the nation's suburban areas, and are thus a radical departure from the American tradition of low-density development. Whether density planning can become

116. *Id.* at 15.
117. Thomason, *supra* note 21, at 58.
118. *Id.* at 56.
119. *Id.*
120. *Id.* at 58.

widely accepted in a country deeply antithetical to it remains an open matter, but the trend does represent something of a solution to the infrastructure crisis which is currently spurring strong anti-development initiatives.

E. *Anti-growth Differential*

Perhaps the most favorable trend for an institution like PDC is the relatively greater strength of suburban anti-development initiatives. It is certainly true that both cities and suburbs are facing the challenges of slow growth; the comprehensive restrictions enacted by San Francisco indicate the power of anti-growth in downtown areas. But it is also the case that slow-growth is a *greater problem* for suburbs than it is for cities, with the faster growth, more vociferous activism, greater lack of infrastructure, and more severe traffic problems of cities. The result is that urban areas may find themselves *relatively better off* in an anti-development climate, and better able to compete with the suburbs even as they suffer through slow-growth initiatives themselves. The reason is simple: the suburbs suffer *more*. Joseph M. Egan, Jr., President of the Philadelphia Industrial Development Corporation, is strikingly supportive of this feeling in a July 19, 1988 letter to PDC. He writes: "Anti-development in the suburbs is inherently good for cities. If we can improve our efficiency to govern and manage our affairs in a coherent manner, we will benefit."

An example close to home is the current debate in New Jersey over the imposition of a state-wide growth plan. Neal R. Pierce writes in New Jersey's *County News*: "[C]hoking on its own growth[,] . . . [New Jersey is] about to become the first major industrial state to embrace serious statewide land-use controls."[121] The impetus for New Jersey's plan is typical: rising infrastructure costs, traffic congestion, disappearing open spaces, and a general sense that the state is losing the quality of life benefits which have proved so attractive in wooing firms from New York City. It is supported, also typically, by businessmen, environmentalists, and politicians across the political spectrum.[122] By withdrawing state support for infrastructure enhancement in areas not approved for development, the proposal encourages density and focuses growth into urban centers

121. Peirce, *Strangling on Success, N.J. Looks at Unprecedented Growth Controls*, County News, May 16, 1988, at 18.

122. *See id.*

while stressing conservation in rural areas.[123]

In all these ways, New Jersey's slow-growth proposal is typical of many other such plans throughout the country. Also typically, the plan has proved extraordinarily controversial, and has outraged city officials and landowners who find it ignorant of economic realities and demographics.[124] This is somewhat to the benefit of New York City. The restrictions will raise the cost of development in New Jersey, and reduce the choices of available space. This, along with the acrimonious and uncertain political atmosphere the plan has created, will provide powerful disincentives to firms looking to move to New Jersey from New York. However, New Jersey's problems should not be taken as an indication that New York is "doing fine" in terms of facing anti-development sentiment; this will not be New York's automatic ticket out of the slow-growth problem. The city still faces the massive problems of strained infrastructure and vehement citizen opposition to growth. The problems of New Jersey may provide a boost to New York's economic development efforts, but they will not solve the endemic problems PDC faces in fostering development within the city. The fact that the problem exists more severely in other areas does not make the problem go away in a city such as New York—it merely illustrates the scope of the problem.

F. *Possible Solutions*

It is clear, then, that the future of anti-growth measures shows a continued increase in their use and severity, even as some steps are taken to mitigate their harshest consequences for cities and other areas. What more can be done to ease anti-development efforts and recommit the nation to growth? The outlook here is not particularly bright—there are no easy cures. Many solutions that do exist are wholly unpalatable. A recession, for instance, would put a halt to anti-development movements by stopping growth, but this solution is clearly worse than the problem.

1. Improved Communication

One factor which has real potential for mitigating the anti-growth movement is for developers to learn to better communicate with local governments and the surrounding communities. Many developers have traditionally failed to determine public sentiment

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123. DEVELOPMENT TRENDS 1988, *supra* note 1, at 17.

124. *Id.* at 18.

before going ahead with projects, and have likewise failed to educate the public when a project is up for approval. Bernard Ury, a Chicago public relations executive, suggests that "by spending time and money up front in doing a better job of sounding out and then accommodating public sentiment, real estate developers probably could accomplish more in less time and at less cost — and create goodwill in the bargain."[125] As a corollary, developers must also establish stronger ties with the local agencies who have the power to grant permission for a proposed development.[126] Developers who are responsible community citizens often have the advantage in getting through the regulatory maze; one reason the firm Hires Interests was granted a permit to build in San Francisco's strictly controlled market was because it had a responsible reputation in the city.[127] Learning to reason with the anti-growth sympathies of public and government will not make the slow-growth movement go away. But it *will* reduce potential costs for developers by ensuring timeliness and predictability, thus mitigating the adverse economic consequences of anti-development.

2. Increased Infrastructure Spending

Another potential solution to the anti-growth problem is for the United States to more fully and actively commit itself to an improvement of its infrastructure, especially the highway system. By matching infrastructure spending to the pace of development, the nation may reduce the strain on infrastructure that is the cause of so much anti-development sentiment. In an age of fiscal austerity in localities and huge deficits in the federal budget, finding money for such a program may be next to impossible. Not all improvements require huge capital outlays, however. By encouraging voluntary programs to reduce traffic congestion (like staggered work hours), and utilizing emerging computer technologies which can efficiently regulate traffic flows, the frustrations of rush hour can be reduced without spending large sums of limited public monies. As we noted before, however, this solution may backfire and turn out to be no solution at all. Increasing infrastructure spending may only serve to increase demand and thus maintain congestion, leaving a lot of public money spent for little benefit.

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125. *Developers Should Show Sensitivity To Public's Needs*, NAT'L REAL EST. INV., May 1986, at 36.

126. Downs, *supra* note 18, at 34.

127. *See Workshop*, *supra* note 50, at 37.

G. *Cities vs. Suburbs*

In the end, however, infrastructure enhancement may do little to mitigate anti-development sentiment in the suburbs. Even with good roads and civic-minded developers, suburban Americans increasingly dislike the urban sprawl which encroaches on open areas. They are likewise resistant to density building. Since development can only occur up or out, suburbs may be forced to face slow-growth measures in the forseeable future, condemned to do so by the very largesse they have so swiftly achieved. There is very little that can change the forms our suburban areas are taking. It is these forms themselves which incite residents to work against growth. As such, there really is no *cure* for slow-growth movements in the suburbs.

The cities lack the fundamental problem of a public abhorrence of densities, since it already exists. City governments can encourage developers to be responsible citizens, and make some attempt at improving their infrastructures (which may or may not work). In doing so, and in taking advantage of the beneficial differential between city and suburban anti-growth movements, cities may be able to meet the challenge of growth controllers better than suburbs. This may be feasible if they can overcome the other problems they face in this issue—a highly activist citizenry, resentment at infilling practices, and similar problems. That they can overcome these problems is by no means guaranteed.

CONCLUSION

To sum up, we have seen how traditional slow-growth agendas—those of preservationists and environmentalists in particular—are challenging the development community in new and expanded ways. We have also reviewed the new types of anti-development initiatives—exactment fees, moratoria, legal restrictions, and the like. All of these, we noted, were brought on by an increasingly politicized and activist citizenry angry at the apparent costs of new growth. We have looked into the tremendous costs of slow-growth: spiraling unemployment and inflation, a shortage of affordable housing, social dislocation and elitism, a loss of community economic leadership, and lastly, a development industry in which the middle sized firm is finding it increasingly difficult to compete. We have examined the sources of anti-development sentiment: infrastructure and traffic woes, federal spending cutbacks, limits on local tax increases, citizen activism, and, most importantly, the sprawling character our suburbs are assuming because of America's love of low-density living. We have noted that, in the future, anti-growth initiatives will continue to spread because of the very nature of recent suburban growth and the continuing problems of urban life, and that the legal support for "anti-growthers" will continue to be strong. We can expect new calls for more infrastructure spending, a greater commitment to wide-scale density-oriented planning, and a relative boost to cities from the "anti-growth differential," whereby suburbs suffer under more anti-development sentiment than cities. Finally, we have seen that the cures for anti-development sentiment are limited; developers must learn to communicate better, and governments may wish to recommit themselves to infrastructure spending. Everywhere, anti-development initiative will remain powerful challenges to a pro-growth agenda.

Finally, then, two points need to be expressed. It is clear that the slow-growth movement ultimately derives from the economic boom which has spread across the country in the last decade. In a real sense, the challenge of anti-development must be approached with optimism. The slow-growth movement, coming from economic expansion, is first and foremost a problem of surplus, a problem of a vital and expanding economy. It is, after all, not a bad problem for the development community to face, if one must be faced at all. Better anti-development than its opposite — no development whatsoever. Secondly, anti-development is a very new problem, having only built up steam in the past three years or so. America has not yet felt its full costs or affects; its ultimate consequences for our communities lies in the future, and cannot yet be fully assessed.

We can end by prescribing a new mission for a pro-development agenda: the development community needs to make a better and more convincing argument for growth, reminding America that its history and tradition have been guided by a concern for continued development. Since growth *is* the essence of progress, the development community needs also to remind the nation that its future lies only as its past has directed it: in a continually renewed commitment to the growth and development which have always sustained and improved us.