

Affordable Housing Policy:



Integration of Land Use Tools and the Role of State Growth Management

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Major Paper Submitted to the Faculty of the
Virginia Polytechnic Institute and State University
in partial fulfillment of the requirements for the degree of

MASTERS OF URBAN AND REGIONAL PLANNING

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June 2001

Blacksburg, VA

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Abstract

Affordable housing is recognized as a problem in many localities throughout the United States. Local governments have the power to influence housing affordability through land use policies. Land use tools exist to address affordable housing.. However, these tools are primarily used to address other environmental, economic, and social issues. When implemented to serve other land use objectives, these tools can have a negative impact on affordable housing.

This paper will describe the link between land use regulations and affordable housing, suggest the land use tools necessary to encourage affordable housing from a state growth management perspective, and examine how California, Oregon, and the Portland Metropolitan Region have utilized the tools in their affordable housing policies. Finally, this paper applies the lessons learned from the cases to recommend further action to assist in the integration of land use tools as a means of advancing affordable housing goals.

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Section 1: Introduction to the Affordable Housing Problem

The United States Department of Housing and Urban Development estimates that 13.7 million households in the United States have “critical housing needs”, spending in excess of half their income on housing. Former HUD Secretary Andrew Cuomo has referred to the “lack of affordable housing” as a “terrible housing shortage”. The United States Department of Housing and Urban Development defines affordable housing as “housing that costs no more than thirty percent of a household’s gross monthly income.”

Land costs, development standards, and capital requirements are several of the factors influencing the cost of housing. Local governments have the power to influence housing affordability through land use policies. Certain land use tools exist to address affordable housing, including zoning and exactions. However, these tools are primarily used to address other environmental, economic, and social issues. When implemented to serve other land use objectives, these tools may have a negative impact on affordable housing. Well-intended land use tools utilized to alleviate the congestion of public facilities and to protect environmental or agricultural resources can contribute to general increases in the cost of shelter (White, S., 1992). Utilizing land use tools to achieve affordable housing goals does not necessarily mean sacrificing or abandoning the other objectives. Land use regulations can be used to address a gamete of land use concerns simultaneously.

However, land use tools tend to be applied in isolation, focusing on a particular land use issue and ignoring others. Affordable housing is an issue frequently ignored. When the tools are implemented autonomously and directed at separate issues, the repercussions are usually detrimental for the development of affordable housing. For example, localities often use the land

use tool of “large-lot zoning” to protect open space. The large lots created by this policy can limit the supply of land and can increase the cost of the land. Increased land costs tend to be reflected in higher priced, less affordable housing. However, the negative effects that land use regulations have on housing affordability are not always the unintended consequence of well-intended localities. The impact of land use regulations such as fiscal zoning indicate that many localities knowingly create barriers to affordable housing.

Land use tools should be integrated into a cohesive strategy if they are to effectively address the variety of land use concerns, including affordable housing. This need to integrate land use tools to address a variety of land use issues is reflected in the proliferation of state growth management statutes. Growth management statutes target the broad issues related to development and population growth, while recognizing secondary issues as well. Growth management statutes can serve as the vehicle for integrating and organizing land use tools to include affordable housing considerations.

This paper focuses on the effects of land use tools and regulations on affordable housing. Many other social and economic aspects influence the affordability of housing. Michael Stegeman (1991) identifies several factors that affect housing affordability: the restricted availability of financing at affordable terms, neighborhood disinvestments, and racial and ethnic discrimination all significantly contribute to the affordable housing problem. Land use regulations play a role in some of the factors but not all. The factors incorporate issues other than just land use regulations.

In addition, issues of poverty and unemployment are often recognized as causing widespread housing affordability issues (Downs, 1973). The Spatial Mismatch Hypothesis expands the poverty aspect, incorporating racial discrimination. The hypothesis posits that “perpetual pockets of poverty” are created when low-income minorities are unable to find employment near housing they can afford (Kain, 1962, 1965, 1992). Unemployment, poverty, and racial

discrimination are commonly addressed in the discussion of affordable housing issues. Since housing affordability is often measured by an area's median income, where or if people can find suitable employment and where or if people can find adequate housing impact the housing affordability issue.

Since affordable housing is such a multi-faceted problem, it is difficult to account for all of the relevant issues. By recommending how the negative effects and regulatory barriers created by land use tools can be reduced or reversed, this paper attempts to address one major dimension of affordable housing. This research hopes to provide an incremental contribution to the solution of the larger, more complex problem at hand.

This paper describes the link between land use regulations and affordable housing, suggest the land use tools necessary to encourage affordable housing from a state growth management perspective, and examines how California, Oregon, and the Portland Metropolitan Region have utilized the tools in their affordable housing policies. Finally, this paper applies the lessons learned from the cases to recommend further action to assist in the integration of land use tools as a means of advancing affordable housing goals.

Section 2: Land Use Regulations and Affordable Housing

This section explains the authority to promulgate land use regulations and illustrates how the regulations relate to affordable housing policies. The effects that land use regulations have on housing prices will be discussed through a synthesis of scholarly research. Three types of land use regulations will be identified: zoning, exactions, and planning certainty. The regulatory types will then be detailed to identify their particular role in affordable housing policy.

In recent decades, a reduction in federal activity in affordable housing implies that the federal government intends to play a small role in the future of affordable housing policy. The federal government has made a “unilateral withdrawal...from its primary policy of (affordable housing) supply stimulus of the mid-1980’s” (McIntire and Fritz, 1990). This shift in the federal role affects affordable housing policies by remanding much of the responsibility to state and local governments (McIntire and Fritz, 1990). While local and state governments have always been active in housing policy through the regulation of land use, the diminished federal presence makes general land use regulation the dominant method of housing regulation. Unfortunately, the nature of land use regulations does not always provide a suitable environment for affordable housing production.

Land use regulation is traditionally an authority vested in local and state governments through the police power. The police power is an authority held by states to protect the health, safety, welfare, and morals of the public (*Code of Virginia 15.2-2200*). States can and often do grant this power to local governments. Localities can then use the police power to regulate land use. Land use controls fall within the police power (*Code of Virginia 15.2-2200*). Zoning,

subdivision ordinances, exactions, impact fees, and permitting procedures for new development are some of the land use tools that localities commonly implement.

These land use regulations and exactions serve valid public purposes (Lowery and Ferguson, 1992). By separating nonconforming land uses, encouraging orderly development, improving community character, ameliorating pollution, and reducing traffic congestion, land use regulations can be consistent with the main principles behind the police power.

The Effects of Land Use Regulations

Research on the actual effects of land use regulations such as zoning has yielded quite diverse conclusions. The studies present a “cloudy” picture (Pogodzinski and Sass, 1991). Some commentators conclude that it is impossible to empirically measure the effects of zoning regulations. Zoning can determine the “type of use” permitted on the land down to specific characteristics of the structures built. Such detail makes it difficult to account for all of the aspects encompassed by zoning regulations (Pogodzinski and Sass, 1991). Findings that have resulted from the analysis of specific features of land use regulations [i.e. low density zoning] are also seen as flawed and the results inconsistent (Pogodzinski and Sass, 1991). Despite the diverse conclusions emanating from studies on the effects of zoning, one aspect is consistently revisited—the effect of land use regulations on housing affordability. Land use regulations often increase the price of housing and have a negative effect on the ability of the low and moderate-income public to find affordable housing (White, S. 1992).

While lower cost housing is a necessity for many Americans, a social stigma is attached to such development. The negative reaction by individuals or organizations to proposed unpopular development projects in their community is coined as the “Not In My Backyard” (NIMBY) syndrome.

Many communities associate affordable housing with reduced property values, increased crime, and loss of community character. Therefore NIMBY tendencies often prevail when affordable housing development is proposed. The negative perception of affordable housing can influence how localities design their land use regulations.

Rigid zoning and land use controls may limit the development of affordable housing by limiting the supply of buildable land. Limits on land supply can increase the base cost of the land. Since land costs and construction costs are seen as the two factors contributing to the cost of housing, it is essential that the nexus between land use regulations and housing affordability be recognized (Downs, 1973).

In 1991, the President's Advisory Board published "Regulatory Barriers to Affordable Housing", later referred to as the NIMBY report (The Kemp Commission). Addressing the link between land use regulations and affordable housing, the report claimed that the lack of affordable housing was directly caused by federal, state and local regulations. The report called for regulatory reform and removal. The sweeping conclusions and drastic recommendations of the report were subjected to criticism and skepticism (Cowan, 1994). But the report managed to solidify what previous decades of research suggested: land use regulations (i.e. zoning ordinances, building code requirements, and burdensome permitting procedures) significantly affect affordable housing.

Affordable housing goals were once again visible on the political agenda. Research began to concentrate on teasing out the major characteristics in the relationship between specific land use regulations and housing affordability to determine the extent of regulatory barriers. The research commonly defined regulatory barriers as all "those public policies that are excessive, exclusionary, unnecessary or duplicative and that significantly increase housing costs and limit the supply of affordable housing (*Removal of Regulatory Barriers to Affordable Housing Act of 1992*). The studies challenged the police power legitimacy of land use regulations. Land use regulations were

being investigated as “over-regulations”- regulations that exceed minimum health, safety, and welfare considerations in the provision of housing (Crew, 1989).

Lowry and Ferguson estimate that regulations related to development costs amounted to 20 percent of the 1992 median new home sales price in Sacramento, California and 13 percent in Orlando, Florida in 1992 (Lowry and Ferguson, 1992). Studies conducted in the 1980’s suggest that communities with stringent no growth or slow growth controls have housing prices 35 percent higher than those without growth controls (Bruecker, 1990). Cowan (1994) concluded that 30 percent of housing costs might be saved by regulatory reform.

Lowry and Ferguson identify three classes of regulations that have a significant effect on residential development and the production of affordable housing: regulations that restrict development, regulations that impose impact fees, and regulations that require costly review processes with uncertain outcomes. Gruen (2001) contends that four kinds of actions (or inactions) are primarily responsible for the lack of equilibrium in the housing market: (1) limitations on development; (2) imposition of high fees and exactions; (3) limitations on the use of vacant land for housing; (4) reduced capital funding for transportation, water, and waste treatment infrastructure. Olenik, Thomas, and Cheng (1994) advocated review processes, acceptance of alternative housing, streamlining the permitting process, relaxation of environmental regulations, and use of engineering judgment instead of rigid reliance on regulations as the ways to reverse the negative effects of land use regulations.

For the purpose of this paper, three broad categories of land use regulation types were extracted from the literature: zoning, exactions, and planning certainty. The influence these regulatory types have on housing prices and affordability is widely acknowledged and supported. The various land use tools presented will be classified accordingly, under these categories.

Zoning

The core purpose of zoning is to secure orderly development of the urban land market (Boyer, 1983). Two broad categories of zoning have been recognized- externality zoning, intended to separate nonconforming land uses, and fiscal zoning, intended to attract property owners with high tax-to-service ratios (Pogodzinski and Sass, 1991). Jurisdictions can manipulate both fiscal and externality zoning to serve as exclusionary devices (Pogodzinski and Sass, 1991; Peterson, 1974).

Fiscal zoning exerts a significant influence on housing prices through exclusionary practices and consequently causes the market to undersupply low-income housing (Murray, 1990; White, 1975). Zoning in either form has the potential to raise housing values by reducing negative externalities that would occur in an unregulated market (Pogodzinski and Sass, 1991).

Some research suggests that zoning always causes the price of housing to rise (Henderson, 1983). At minimum, local governments should be cognizant that certain residential development regulations and standards contained in zoning and subdivision ordinances can be revised to actually make housing more affordable (Sanders, Welford, and Mosena, 1982).

The manner in which zoning affects housing affordability depends on how a locality chooses to administer and implement its land use zoning. Fiscal zoning is often referred to as exclusionary. But Rolleston (1987) dismisses the distinction between fiscal and externality zoning and suggests that communities actively practice exclusionary zoning. Zoning is used as “invisible walls” to exclude particular land uses (e.g. affordable housing).

Zoning ordinances extend beyond merely creating zones to determine the use of the land. Zoning can delineate the specific characteristics required of structures built on the land. Building

codes and subdivision ordinances are applications of zoning that create standards and design requirements. Restrictive and excessive building codes add significantly to the price of housing, lower the level of low-income home ownership, and are identified as some of the greatest barriers to making affordable housing profitable for developers (Noam, 1973; Walden, 1987). As for the legitimacy of these land use regulations, the American Homebuilders Association suggests that the majority of the provisions in building codes and design standards function less as safety measures than as the enhancement of purely aesthetic character of housing units.

Building codes and subdivision ordinances can be designed to exclude entire types of housing. Many local governments have created zoning ordinances and building codes that manage to prohibit manufactured housing within their locality.

Manufactured housing differs from traditional site-built homes in that they are constructed in factories, adhere to different building standards, and cost significantly less. Manufactured housing is recognized as a viable source of affordable housing for single families. However, given the unfavorable reputation of manufactured housing and NIMBY attitudes towards it, land use regulations are often created to eliminate and prevent its construction. While such exclusion can and often is prohibited by state legislatures, exclusion can nonetheless be achieved by zoning and implementing “over- regulations”.

Exactions

Land use regulations not only specify the physical aspects of development, but they regulate the actual developers as well. Exaction policies strive to make the developers accountable for the impacts of development projects.

Consistent with Siemon's (1987) work "Who Bears the Cost?", the definition of "exactions" used in this paper is "an assortment of techniques employed by local authorities to compel a developer, either by regulation, negotiation, or simple leverage, to exchange land, money, materials, or services for permission to develop". Exactions fall into two classifications: on-site and off-site.

On-site exactions primarily deal with infrastructure concerns such as water, sewer, and street access. Off-site exactions usually consist of monetary contributions or require developers to provide additional amenities, such as schools, on a different site. While off-site exactions tend to be the more controversial of the two, both on and off site exactions are often challenged as "takings" in violation of the 5th Amendment of the United States Constitution. The takings clause states that "nor shall any private property be taken for a public use without just compensation." In 1994, the U.S. Supreme Court ruled on the issue of when exactions amount to a taking. In *Dolan v. City of Tigard* (114 S.Ct. 2309 (1994)), the court held that a taking occurs when: (1) the interest sought to be furthered is not a legitimate state interest, (2) a physical invasion on the property occurred, (3) no "essential nexus" exists between the legitimate state interest and the permit condition or (4) the degree of the exaction does not meet the "rough proportionality" relationship (related to both the nature and extent) to the projected impact of the development. These standards apply to the variety of land use exactions that can be employed and forces the burden of justifying such land use restrictions on the government.

In most instances the promotion of affordable housing is regarded as a legitimate "state interest". Therefore, exactions created for that purpose tend to be accepted. Many localities are beginning to design more creative and intensive exaction programs, formulating policies that combine on and off site exaction requirements for development projects. Despite the judicial

standard and general acceptance, localities should avoid creating exactions that impose such high fees that development is discouraged.

Impact fees are a common type of exaction. Impact fees can be defined as “one-time payments from developers for off-site improvements necessitated by new development” (*The Appropriate Role of User Charges in State and Local Finance*, 1999). Fees may be based on individual housing characteristics (e.g. the number of bedrooms or square footage) or the overall magnitude of a development project. Impact fees are usually targeted toward infrastructure improvements (i.e. streets, sewers, electricity) and can be reflected in housing costs. Developers can assume the costs or pass the additional costs onto homebuyers (Weitz, 1985). When developers choose the latter, housing prices rise. Impact fees are often criticized for increasing housing costs and contributing to the problem of affordable housing.

Newly recognized forms of exactions include linkage programs and inclusionary zoning. These programs may be used to encourage the development of affordable housing. Linkage programs create exactions for nonresidential development, usually office buildings, and require either the construction of or in-lieu payment for affordable housing. Inclusionary zoning links development approval to the “inclusion” of a designated number of affordable housing units.

Inclusionary zoning can also incorporate incentives. For example, if a developer is willing to include a certain number of affordable units, then a density bonus will be granted that could increase the overall profit generated from the project.

Incentive zoning is based on the same precept recognized in inclusionary zoning. Incentive zoning allows a locality to persuade developers to provide desired amenities in exchange for the approval of more intensive development (Anderson, 1986). In this context, incentive zoning may encourage the development of affordable housing. Density bonuses, relaxed building code

standards, and priority in the permitting process are several examples of incentives that can be extended to developers to make affordable housing development a more enticing endeavor.

Since practically 99% of all new housing is built by private developers (APA, 2000), economic incentives can function as land use regulations. “To the extent that government makes affordable housing a requirement for development opportunities and regulatory relief, developers will follow. To the extent that developers believe they can obtain those opportunities without that stipulation (either somewhere else, or voluntary conditions), self interest will make them try” (Calavita, 1990). Exaction programs provide localities with a land use tool that can have influential power over private developers.

The majority of research on exactions concludes that using exaction practices to assist in the provision of affordable housing is a feasible and usually successful policy. Use of the “exaction tools”, requires a community to plan and clearly direct the property or money acquired. Exacted property should be earmarked for a distinct use; exacted money should be put into a distinct fund (Best, 1990).

Planning / Certainty

Proper planning is essential to the implementation of any of the land use regulations. Without the appropriate guidance, efficiently structured procedures, and orderly implementation, land use regulation can be unpredictable, uncertain, and inconsistent. Instability in land use regulation can have adverse effects on the developers, the local government, and the community.

The comprehensive plan is the basic land use planning tool. A comprehensive plan is a forward-looking document. The plan describes the historic, demographic, geographic status of the community with maps, plats, and charts. Through various goals and objectives the comprehensive

plan addresses aspects of the community including land use, community facilities, historic preservation, transportation, housing, and redevelopment. Then by establishing broad policies to guide the land development process, the comprehensive plan expresses the community's vision for the future. This vision is then implemented with zoning, exaction, and other policies. Properly devised comprehensive plans recognize population demographics, growth estimates, and try to accommodate for the anticipated housing demand. Addressing the issue of affordable housing in the planning process enables a community to encourage orderly and desirable affordable housing development consistent with community goals.

While comprehensive planning is a long-term endeavor, attempting to predict and guide the future of development, other more immediate processes are in dire need of being streamlined for efficiency and certainty. The significant impact delays in development have on housing prices is widely recognized in the housing policy debate (White, S., 1992). Permitting processes for development approval tend to be burdensome and excessive, adding to the cost of the development. Multiple layers of review, lack of clarification as to requirements, and the inappropriate use of discretion are some of the common problems that can be improved through more thorough planning and streamlined process design.

Certainty in the development and planning stages of projects empowers localities to develop better comprehensive plans and allows construction of larger, more complete parallel projects at lower cost to the city (Hagman, 1983). Certainty for developers eliminates much of the risk and cost tied to affordable housing developments. Confidence in the development process can increase effectiveness.

Local planning is a powerful tool, but if localities do not have adequate incentives or state requirements they often fail to plan for affordable housing. This is especially prevalent when neighboring localities employ exclusionary tactics. When localities compete to attract developers

through land use policies, affordable housing requirements are usually not a priority. Based on such competitive behavior on the local level, the opinion is held that only states can effectively mandate local governments to fairly allocate planned housing types (Ketchum, 1991). Some states now require, or at least authorize, some type of affordable housing planning, actively requiring some connection to the regional level. The next step is to make affordable housing planning part of growth management planning for every state (Stuart Meck 2000 FAICP).

Growth Management

Origins of state growth management can be found in the 1970's as states like Oregon and Washington developed comprehensive state statutes regulating aspects of land use. The coordination of development and planning at the state level is necessary to control and direct development patterns. By stipulating how local governments exercise their land use regulation authority and by specifically addressing affordable housing, state growth management statutes can serve affordable housing objectives.

The majority of state growth management statutes integrate housing concerns through housing goals that mandate localities to recognize their affordable housing needs and create plans to assume a "fair share" of the region's affordable housing demand. The concept of "fair share" originated in New Jersey's 1983 Mt. Laurel II case (*Southern Burlington County NAACP et. al. v. Township of Mount Laurel*, 92 NJ 158, 456 A 2d. 390). The New Jersey Supreme Court decided "affirmative governmental devices...including lower-income density bonuses and mandatory set-asides (are) required if the opportunity for lower-income housing was to be a realistic one" (92 NJ 217).

A judicial mandate is futile without the proper assessment and allocation of land use tools and regulations. Localities have the authority needed to encourage affordable housing through land use regulations, but competing land use objectives and social stigmas often stifle such efforts. State growth management can assist in the integration and organization of local land use regulations to adequately address affordable housing.

Given the diversity of local situations, it is unlikely that a “one-size-fits-all” generic housing policy will succeed across the nation. However if land use tools and regulations are designed in a growth management context, exclusionary practices may be prevented and barriers to affordable housing development removed. Specific zoning, exaction, and planning tools can advance affordable housing goals if integrated into a growth management framework that recognizes such goals.

Section 3: Land Use Tools for Affordable Housing

This section will list and describe the land use tools available to address affordable housing issues. Each of the tools will be examined for its effects on housing and land prices and how each should be used to effectively advance the provision of affordable housing. Ten of the tools are locally based regulations. The final tool (growth management) describes the overarching role of the state to integrate the tools into a legislative framework from which to work.

The Four Zoning Tools

Zoning is the most commonly recognized land use regulation. Zoning originated as a technique for regulating the location, type, and amount of development within a locality. The legitimacy of zoning was upheld in the 1926 case of *Euclid v. Amber Realty Co.* (272 US 365, 47 S.Ct., 71 Fed. 303 54 ACR 1016 (1926)). From this case the term Euclidean zoning was derived to describe the local practice of separating land into distinct zones and designating the zones with specific land use classifications, such as single-family residential, commercial, and industrial. One impetus behind this zoning is to separate nonconforming land uses. For example, Euclidean zoning attempts to prevent a smoke-emitting factory from being located right next to a subdivision of single-family homes potentially causing health hazards for the residents. Euclidean zoning works to address many social concerns, such as health, fire prevention, and safety.

Zoning has expanded in scope to regulate more specific aspects of land use. Zoning can determine what new development will or will not look like, down to the size of the lot and the design

of the homes. Therefore, the provisions incorporated into a local zoning ordinance can have a direct impact on the price of homes built in that community.

Use of zoning does not necessarily increase the cost of housing. The effect that zoning has on affordable housing depends upon what types of development a locality prescribes in its zoning ordinance. Zoning provides localities with several tools that can be integrated into an effective affordable housing strategy.

Several zoning classifications negatively impact housing affordability, while others may improve affordability. Minimum density requirements, maximum lot sizes, high density zoning, small lot zoning, and multi-family zoning are some of the major zoning classifications that hold the potential to increase housing affordability.

TOOL # 1: Zoning for High Density and Maximum Lot-Sizes

The main difference between the zoning types that increase affordability and the types that decrease affordability is how they impact the cost of land. For a locality to increase housing affordability, land must be zoned for the higher densities and smaller lots mentioned above. By using less land or building more units per acre, these zoning types can considerably reduce the land costs ultimately factored into housing cost. However, many localities have taken the opposite approach. Justified as protection of open space, the localities zone for minimum lot sizes and maximum densities. Low density, large lot zoning can potentially provide a community with tracts of open space by preventing the subdivision of the land for development. However, the open space is usually located on large estates. The land is preserved as open, green space because the land is owned by individual landowners. Low density, large lot zoning may protect land from becoming consumed by intensive development, but such zoning can also inherently discourage the development of affordable housing. Low density, large lot zoning sets limits on the supply of

buildable land which can increase housing costs. Localities must strive to balance open space and land preservation initiatives with their realistic housing needs. Localities must accommodate for a level of higher densities and smaller lots within their communities to increase the development of affordable housing. The creation of maximum lot sizes puts a cap on how large a residential lot can be. This limit prevents excessively large lot sizes from driving up housing costs, yet still allows for flexibility in residential project designs. The first land use tool for affordable housing can be summarized as *ZONING FOR HIGH DENSITY AND MAXIMUM LOT-SIZES*.

TOOL # 2: Elimination of Exclusionary Zoning Practices

Use of the zoning types that increase affordability is not enough. A locality must back such zoning with an intentional decision not to zone for the types of zoning that decrease affordability. Certain zoning methods make housing more expensive and function as a way to exclude affordable housing from a community. Some of these exclusionary techniques are considered to be maximum density requirements, minimum lot sizes, low density zoning, large lot zoning, and excessive single-family zoning. The best way to ensure that zoning does not act as an exclusionary device is to actively zone for development that encourages affordable housing. This type of zoning extends beyond simply reducing land costs. It allows developers to design projects more creatively thus providing more opportunities for affordable housing development.

Multi-use, Cluster, and Planned Unit Development (PUD) promote housing affordability by allowing developers more flexibility in project design (White, S. 1992). Cluster zoning and PUD projects usually arrange housing units in concentrated “clusters” on the site. Such design results in smaller lot sizes and more open space. The smaller lots may function to lower price of housing in the development project (White, S. 1992). The open space created through these development designs can then be protected or used for other land uses. Both Cluster and PUD projects focus

on the design of the overall site, instead of simply concentrating on the development itself. PUD development often incorporates a mix of housing types and multiple land uses to develop projects that are self-sustaining by providing residents with retail and commercial development needs throughout the housing development project (White, S. 1992). Multi-use zoning, while not as holistic in design as PUD, strives to integrate various land uses and increase residential proximity to jobs, services, and commercial amenities. Often as developers design these projects, opportunities to provide affordable housing are identified. The smaller lots, mix of housing types, and development of multiple uses can give developers options (*Affordable Housing Techniques: A Primer for Local Government Officials*, 1992). Such flexibility in zoning can make the development of affordable housing a more attractive option for developers.

The development types summarized in the list below are seen as potential methods for encouraging affordable housing. Such zoning options may be beneficial if incorporated into local zoning ordinances.

Development Types That Can Increase Housing Affordability

Zoning for these classifications can facilitate development designs that produce more affordable housing units and reduce the exclusionary effects of other zoning techniques.

- Multi-family Housing
- Attached single family: (*townhouses, condominiums, and duplexes*)
- Multi-use development: *development that includes multiple land uses: residential, commercial, industrial, etc.*
- Cluster development: *concentrated densities on portions of a proposed development tract*
- Planned unit development
- Manufactured housing: *Mobile homes (See Tool # 4)*

The second tool that should be employed to increase affordable housing is: *ELIMINATION OF EXCLUSIONARY ZONING PRACTICES* (by zoning for the types of development listed in the table above).

Table 2 illustrates the relationship between the first two zoning tools by classifying the major zoning practices according to their effect on housing affordability. The tools shown to increase affordability serve as the basis for the first tool, while the zoning tools identified as decreasing affordability are the zoning techniques the second tool aims to eliminate or at least limit.

TABLE 2

<i>Zoning Effects on Affordable Housing</i>	
INCREASES AFFORDABILITY	DECREASES AFFORDABILITY
Minimum Density Requirements	Maximum Density Requirements
Maximum Lot Sizes	Minimum Lot Sizes
Small Lot Sizes	Large Lot Sizes
Multi-Family Zoning	Excessive Single-Family Zoning
High Densities	Low Densities

TOOL # 3: Creating Distinct Subdivision, Design, and Building Standards for Affordable Housing Units

Local zoning ordinances are not the only regulations affecting land use. Subdivision ordinances, design standards, and building codes are separate from local zoning ordinances yet serve a similar function. These regulatory mechanisms provide the specifications for development projects and individual housing units.

Subdivision ordinances are created by localities to regulate the division of property for development. Some of the major areas regulated by subdivision ordinances include: infrastructure

requirements (streets, curbs, gutters, water, sewer, drainage), lot requirements (frontage, side yards, set backs, rear yards), and design requirements (road designs, relationship to existing development, landscaping) (National Homebuilders Association, 2000). Subdivision ordinances regulate a wide range of development features through minimum standards and requirements. The design of these ordinances can have a major influence on both the design of development and the characteristics of the individual housing units. One characteristic that can be impacted is affordability. If subdivision ordinances establish high minimum standards and excessive requirements, the price of housing is likely to be affected. Complying with the standards can be expensive for a developer, and the costs may be reflected in less affordable housing.

Design standards follow the same principles of subdivision ordinances. These regulations determine specific design (land, structure, and use) features for new development. Design standards assist localities in setting standards of quality and encourage planned, orderly, and attractive development. Unfortunately, affordable housing is not often accounted for in these regulations.

Building codes establish minimum standards for housing construction. Typically, the codes set requirements for sanitary facilities, electrical, lighting, ventilation, building construction, building materials, fire safety, plumbing, and energy conservation (*Decoding Building Codes*). Building codes are aimed at health and safety concerns.

No national uniform building code is mandated in the United States. Some states set standards, adopting a Uniform Statewide Building Code. Yet, often localities are able to enforce their own set of requirements. Most local codes are modeled after national standards. However given that the nation lacks a uniform code some localities create very stringent policies. As with subdivision ordinances and design standards, building codes can contribute to the cost of housing if the codes are too restrictive or too demanding.

These three land use tools serve a legitimate purpose, ensuring that new construction meets safety and quality standards. However, when localities create excessive standards in an effort to enhance the community's aesthetic value, affordable housing can be affected. No matter how attractive new housing is, if the price is beyond the reach of low and moderate income residents, then affordable housing can become a problem.

The National Association of Home Builders asserts that the majority of building design standards serve aesthetic purposes more so than safety concerns. Therefore the relaxation of building codes, design standards and subdivision ordinances may not necessarily result in the construction of poor quality, substandard housing. Instead flexibility in the standards may provide developers with ways to save money on construction costs, lowering the end cost of housing.

Most localities hesitate to lower their standards for new development, fearing their community will be inundated with unwanted and inappropriate development. A reasonable option for localities to pursue is to develop separate standards and building codes geared only for affordable housing development (White, S. 1992). A community can identify visual features and amenities required by their regulations that are not essential. Affordable housing units can then be exempted from these extraneous standards. If affordable units are required to comply with less rigid standards, developers have an incentive to develop such units. Localities must make certain that developers do not abuse reduced standards and that the costs saved directly translate into lower housing prices.

Building codes and design standards need clear review and appeal procedures. The procedures need to be clearly communicated to developers. The more a locality educates developers on how their land use regulations work, the more efficient and less costly the entire procedure becomes.

Building codes, design standards, and subdivision ordinances are the third land use tool localities possess. If localities do not demand excessive requirements and make special exceptions or entirely separate codes for affordable housing units, then these regulatory codes can actually encourage the development of affordable housing. This tool can be described as: *CREATING DISTINCT SUBDIVISION AND DESIGN STANDARDS FOR AFFORDABLE HOUSING UNITS.*

TOOL # 4: Zoning for Manufactured Housing

Land use regulations enacted with legitimate intentions often have unforeseen repercussions that have a negative impact on other issues. When the various zoning types described above are assembled into a comprehensive land use ordinance, the potential remains for exclusion to occur.

The exclusion of manufactured housing often results from tight zoning regulations and building codes. The design of land use regulations can render manufactured housing impossible to develop. Inherent differences between manufactured housing and traditional site-built housing exist. However the differences do not necessarily contribute to the basic shelter function of housing (Cowan, 1991).

Manufactured housing is designed in sections at a factory and then transported to the site. Manufactured housing is constructed of virtually the same materials as site-built homes (White, S., 1992). The affordability of manufactured housing can be attributed to its efficient assembly line production, and not necessarily a reflection of substandard quality.

Today's manufactured housing is constructed in accordance with the HUD Code. Enacted in 1974 as a building code for manufactured housing, the HUD Code sets construction and safety standards. The HUD Code is similar to the codes pertaining to site-built housing (*The Manufactured Housing Institute, 2000*). The manufactured homes constructed today in accordance

with the HUD Code are difficult to distinguish from traditional site-built homes (*Affordable Housing Techniques: A Primer for Local Government Officials*, 1992).

Localities exclude manufactured homes in two ways. One method relates to the NIMBY notion that manufactured homes are poor quality and will detract from a community. The second method is simply oversight. If a locality over-regulates with rigid design standards and excessive zoning ordinances, the development of manufactured housing may be excluded. This exclusion is quite common (Rolleston, 1987). Over twenty states have responded by creating legislation that forbids localities to use land use regulations as a means of prohibiting such housing options (Calavita, 1996).

Manufactured housing holds a substantial pricing advantage over traditional housing and can provide a community with a viable source of affordable housing especially single-family detached homes (*Affordable Housing Techniques: A Primer for Local Government Officials*, 1992). One of the main reasons for the creation of the HUD Code was to “preserve access to affordable housing for middle and lower income families.” (*The Manufactured Housing Institute*, 2000). By complying with HUD Code standards, the aesthetic and safety features of manufactured housing have improved without adding substantially to the cost.

Manufactured housing needs to be recognized as a legitimate land use tool for localities. By zoning for the development of manufactured housing and ensuring that existing regulations do not forbid its development, localities can make strides in meeting their affordable housing needs. The final zoning land use tool is *ZONING FOR MANUFACTURED HOUSING*.

Summary of Zoning Tools

Zoning serves many purposes in a community's land use strategy. If zoning is used to advance housing affordability the four tools described need to be considered. Localities can zone for higher density and smaller lots, not exclude different development types, create reasonable and alternative building and subdivision codes, and zone for manufactured housing.

Zoning determines what can and cannot be built, but cannot mandate construction. Once a locality decides how they would like to see affordable housing integrated into their community and zones accordingly, the locality must provide the adequate incentives to motivate developers into fulfilling their vision.

The Four Exaction Tools

The following four tools are grounded in the definition of "exactions" (*an assortment of techniques employed by local authorities to compel a developer, either by regulation, negotiation, or simple leverage, to exchange land, money, materials, or services for permission to develop*). Some of the exaction tools provide positive incentives while others mandate certain actions. All four tools exact "*land, money, materials, or services*" that can potentially contribute to the construction of affordable housing units.

TOOL # 5: Voluntary Inclusionary Housing Programs

Inclusionary zoning requires developers to include a certain number or percentage of affordable housing units in a new development project in exchange for the ability to develop more intensively (White, S. 1992). Inclusionary zoning can be voluntary or mandatory. Voluntary programs tend to be less controversial and usually appeal to developers because of the incentives

the programs provide. The incentives tied to inclusionary zoning programs include density bonuses and zoning variances which permit more intensive (and profitable) development.

The affordable units required by inclusionary programs are referred to as “set-asides” and can either be integrated into the actual project design or constructed off-site (White, S. 1992). Another option sometimes offered by inclusionary programs allows developers to make a payment “in-lieu” of actually constructing the units. This money is then used by the community or contributed to an agency to build the needed affordable units. The state must enable localities with the general power to enact inclusionary zoning programs. The design of individual programs may vary. Of the various designs of inclusionary zoning, the most common type requires a developer to build a specified number of units (at a higher density) on the same site in exchange for the inclusion of affordable units (*Affordable Housing Techniques: A Primer for Local Government Officials*, 1992).

The main considerations a locality must account for when developing an inclusionary policy included the (1) population being targeted for these affordable units, (2) percent of units in a development that should be set-aside as affordable, (3) alternative options (besides actually constructing affordable units dispersed throughout the project), and (4) design standards for the set-asides. The target population determines where a locality’s housing needs fall (low, very-low, or moderate-low income range). The percentage of set-asides required should reflect the localities housing needs. In Montgomery County, Maryland, inclusionary zoning forms the core of its affordable housing policy. Briefly described below are the specific provisions included in Montgomery County, Maryland’s inclusionary program.

Montgomery County, Maryland

Montgomery County, Maryland set a goal to produce more moderately priced homes and help distribute low- and moderate- income housing throughout the county's growth areas.

Builders must make available 12.5 percent to 15 percent of units in subdivisions of over 50 units to lower income households in exchange for a 20% density bonus.

Developers in Montgomery County report that their profits on development with inclusionary units approximate profits on similar developments without and the county has produced over 10,000 affordable units (Walsh, 2000).

The percentage of units required by Montgomery County (12.5-15) has worked relatively well for the community, and most studies recommend that a reasonable set-aside is between 10 and 15 percent of the units in a development project (White, S., 1992).

Economic incentives provided by inclusionary zoning can appeal to developers. Some of the incentives associated with inclusionary programs incorporate zoning tools (increased densities, smaller lot sizes, reduced building standards). Other incentives include exemptions from impact fees and priority in the permitting process.

Evidence indicates that more affordable housing has resulted from the implementation of inclusionary zoning than through federal policies (Calavita, 1997). Inclusionary zoning is a very valuable tool for affordable housing especially when designed to give developers a comparable or increased return on their investment. The fifth land use tool to be implemented by localities to increase affordable housing is: *VOLUNTARY INCLUSIONARY HOUSING PROGRAMS*.

TOOL # 6: Incentive Provisions and Zoning

Incentives incorporated into inclusionary zoning policies can act as tools in and of themselves (*Affordable Housing Techniques: A Primer for Local Government Officials*, 1992).

Incentive zoning is a land use tool that attempts to correct for market failure (Mills, 1979). An inadequate supply of affordable housing indicates market failure. Developers have little economic incentive to build affordable housing in an unregulated market because affordable housing units generate less profit than other units. Localities should attempt to craft land use regulations that create incentives for developers to build such units.

Providing a developer with zoning adjustments, rezoning, or lowered standards can act as incentives for the provision of affordable housing. Allowing developers to create projects that are not permitted under existing zoning regulations in exchange for the provision of affordable housing can work toward equalizing the market. Incentives should either decrease developers' construction costs or allow them to construct additional units. Increasing a developer's profits is the objective of an incentive zoning policy.

Most incentives are directly related to the zoning ordinance. Incentives can be inserted into a land use policy at a variety of junctures. But as with any exception made for affordable housing, localities must exercise caution to ensure that only developments meeting or exceeding the affordable housing criteria benefit from the incentives. Incentives should be considered conditional. Developers should be penalized if they fail to uphold their end of the agreement and do not meet the affordable housing

requirements. The table listing the possible incentives suggests that some specific elements that comprise the sixth land use tool for affordable

Land Use Incentives that Promote Affordable Development

- Density Bonuses
- Multi-Use, Cluster, Planned Unit Development Approval
- Relaxation of Zoning/Subdivision Codes
- Relaxation of Building Codes
- Direct Subsidies to the Developer
- Exemption from Impact Fees

housing. This tool is a positive type of exaction, comprised of the above list, and can be described as: *INCENTIVE PROVISIONS AND ZONING*.

TOOL # 7: Moderate Impact Fees and Creation of a Housing Fund

Inclusionary and incentive programs are not typical types of land use exactions. Exactions are most often seen as impositions or stipulations put on a developer in the form of fees or infrastructure improvements. In fact the concept of exactions originated from federal disinvestments in local infrastructure improvements. Exactions of this genre are generally regarded as impact fees. Impact fees require a developer to financially mitigate for the effects of a development project. Impact fees are allocated mainly to address the effects on infrastructure, water, sewer, and streets, but may also extend to include amenities such as schools, parks, or affordable housing (Hagman, 1983).

Impact fees play two conflicting roles in affordable housing policy. Since impact fees increase development costs, developers often pass the costs onto the homebuyers through increased housing prices (Weitz, 1985). On the other hand, impact fees supply localities with a fund of money. This money can potentially contribute to the construction of affordable housing units.

If a locality wishes to spend impact fees on affordable housing, they can establish a Housing Fund. A Housing Fund is simply a collection of local revenue designated for affordable housing projects. The actual construction of the affordable housing can be accomplished through public/private partnerships. The local government may allocate funds to non-profit organizations, local volunteer organizations, and other agencies to construct affordable housing. Alternatively, localities can use the funds directly to build the affordable units.

As a land use tool for affordable housing, impact fees must be used in moderation to mitigate their effect on housing prices. The money generated by the fees should be partially directed toward the development of affordable housing. This tool can be summarized as *MODERATE IMPACT FEES AND CREATION OF A HOUSING FUND*.

TOOL # 8: Linkage Programs

Linkage programs also require developers to compensate for the impact of their development. Linkage programs achieve this requiring that affordable housing units be constructed at the time of other development. Linkage programs are usually directed at nonresidential development, particularly office buildings. The programs attempt to make the development accountable for its impact on housing demand. Linkage programs require developers of office space and other nonresidential development to construct or financially contribute to the construction of affordable housing units.

Linkage programs act as a form of compensation. Often the effects that nonresidential development has on housing are not addressed. The development of a large office building, intended to employ a large number of workers, is likely to have a significant impact on a locality's housing demand. New employees will need to find housing. Most development that improves a community's economic situation can impact its housing demand and consequently its affordability. Linkage programs are based on the relationship between these different types of land use. Linkage programs require developers of projects that could potentially drive up the demand for housing to assist in the development of affordable housing. This is aimed at offsetting any significant increases in housing prices due to the increased demand.

In short the sixth tool to achieve an adequate supply of affordable housing is *LINKAGE PROGRAMS*

Summary of Exaction Tools

As shown exactions are land use tools that come in dramatically different designs. But in each case localities hold their power of permitting approval over developers to compel them to develop according to certain conditions. Inclusionary programs and incentive zoning are the more mutually beneficial tools. Impact fees and linkage programs are usually mandatory. Regardless of their nature, the four exaction tools can assist localities in the effort to provide an adequate supply of affordable housing.

The Two Planning and Certainty Tools

The previously described tools require review and approval procedures. The administration of these procedures is seen as a web of red tape that tangles up the efficient implementation of the other tools. Also, developers who participate in innovative development programs should have a clear understanding of the entire process and the risks involved. Local officials, the developers and the community are all stakeholders involved in the development process and need to be confident in the efficiency and stability of the land use policies.

This sense of stability and certainty must be achieved on several levels if land use regulations are to work as a cohesive strategy. Administrative efficiency in the permitting process, formality in development review and agreements, and structured guidance through comprehensive planning are the objectives of the two planning and certainty tools discussed.

TOOL # 9: Streamlining the Permitting Process: One-Stop Permitting and Time Limits on Permit Decisions

Multiple layers of review, overlapping permit requirements, misunderstandings, and abuse of discretion plague local permitting processes. The complexity of the procedures consumes an

excessive amount of time, and the regulatory delays cost developers money. When a development proposal is tied up in the permitting process, developers still bear costs: the interest on the construction loans, property taxes, investment opportunity costs, and overhead.

Given that all development is subject to review and permitting, the long delays and inefficiency is only exacerbated when a developer pursues an affordable housing project. Projects driven by inclusionary programs, incentive policies, and other affordable housing exceptions usually have to adhere to different procedures than typical developments. The exemptions, exceptions, and special circumstances typically tied to affordable housing programs tend to require extra review and additional permits. The added potential for regulatory delay can discourage developers from proposing affordable housing projects.

Changes and additions to land use regulations are often being made to add to their effectiveness. While changes are necessary for a locality to address new concerns, development proposals frozen in the permitting process may be jeopardized. Since the permitting and review procedures are lengthy, regulations often change before a development completes the procedure. Therefore a development proposal that met current regulations when submitted for review, may not meet the new regulations added while it was under review. Developers see this circumstance as unfair. Such perceptions discourage developers from proposing highly regulated affordable housing projects.

Localities must first recognize the ineffectiveness in their current procedures and then try to correct them. The common flaws identified in permitting processes are listed in the adjacent table. Often the project review and approval for one development concern, such as street width or storm drainage, may require separate

- Multiple Agency Jurisdiction
- Lack of Agency Cooperation, Communication, and Coordination
- Unclear directions and instructions for submitting proposals
- Procrastination--Delay
- Excessive and Overlapping Permit Requirements

permits from a variety of different state and local agencies. These agencies can range from the local planning board to the national Environmental Protection Agency. Referred to as multiple agency jurisdiction or multiple layers of review, this adds to the inefficiency and unpredictability of the process. This situation can be further exacerbated when the agencies fail to communicate or apply inconsistent standards of review.

A basic lack of understanding on the part of developers can add to delays. If communities do not make developers aware of all the necessary permits and review procedures needed for approval, many projects become stalemated simply due to inadequate paperwork. The permitting process is political, so in addition to actual administrative delays are politically motivated delays. Preferential treatment through partisanship or discretionary abuse can also contribute to the “red tape” that complicates the permitting process. By fixing these negative characteristics, a locality can accelerate the process, and reduce costs for developers.

Two effective ways of streamlining the process are to develop one-stop permitting and to limit the amount of time a locality can take to review a proposal and make a decision. The idea of one-stop permitting is to create a process where developers can obtain and submit all of their permitting applications at one location. One-stop permitting assures developers that they have submitted all the necessary forms and reduces the administrative exchange of permitting information.

By creating a well-structured and efficient permitting process, a locality can create certainty in development while encouraging developers to take advantage of unique affordable housing opportunities. Localities can also enact provisions that prevent newly created regulations from affecting development proposals already submitted. An essential tool to enhance planning and certainty is: *STREAMLINING THE PERMITTING PROCESS- ONE-STOP PERMITTING and TIME LIMITS ON PERMIT DECISIONS*.

TOOL # 10: Local Comprehensive Plan with a Housing Element

Making the permitting process more efficient and certain is futile unless a locality identifies the type of development they desire. Local comprehensive plans are necessary for a successful land use regulation strategy. The comprehensive plan is a forward- looking document that describes and illustrates what a community would like to look like in the future (*Affordable Housing Techniques: A Primer for Local Government Officials*, 1992). The comprehensive plan should be the resource from which all land use regulations are derived.

A local comprehensive plan provides a community with the opportunity to predict future population, determine consequent housing needs, and plan accordingly. A comprehensive plan offers the opportunity to decide which land use tools to employ to encourage affordable housing. Deciding on the most effective mix of tools can only occur when the locality holds a clear and realistic understanding of the community's needs.

A housing element should be included in a local comprehensive plan to advance housing affordability. The locality must determine if or to what extent affordable housing is a need. When a locality does suffer from a lack of affordable housing, the locality must recognize and account for the problem. Communities with a need for affordable housing should extrapolate that need according to future demographic estimates. Understanding and accepting future affordable housing

needs enables a locality to develop feasible and realistic goals. Comprehensive plans can guide and advance affordable housing goals. Communities should however reflect their housing goals in zoning ordinances and other land use regulations. An essential part of any land use scheme intended to advance housing affordability must be: *LOCAL COMPREHENSIVE PLAN WITH A HOUSING ELEMENT*.

THE TOOL BELT: Growth Management

As described above, land use tools can be designed to facilitate the development of affordable housing. But localities must first decide that affordable housing is a goal in their community. Often localities and states fail to do so.

The exclusionary zoning techniques, regulatory barriers, inefficient procedures, and negative attitudes suppressing the development of affordable housing need to be addressed. Reversing these regulation trends is not likely to be successful taking place one community at a time. For affordable housing policy to be effective it needs to occur across jurisdictions within a region or a state. The land use tools accomplish little to improve affordable housing if implemented sporadically throughout a region. Uniformity in regulation eliminates the potential for neighboring localities to compete for development via lenient affordable housing requirements.

Only if the land use and building regulations are similar in the localities of an area will a developer be compelled to comply with affordable housing policies. If the regulations only exist in certain localities, then developers will avoid those localities and concentrate on those without affordable housing requirements.

The need to create a degree of consistency across jurisdictions is imperative and describes the state's role in affordable housing policy. States can and do control local planning. An

effective method is through state growth management statutes. The statutes can require localities to develop comprehensive plans and require them to include a housing element.

Growth management statutes should require housing elements. The housing elements should assess the locality's current and future affordable housing needs and provide the appropriate zoning and land use provisions to meet those needs. The housing elements should also be subjected to review by a formal regional or state authority to certify that "fair share" principles are employed and regional compatibility exists.

States must also provide and enable localities with the authority to pursue the other land use tools. Since all localities are different, states need to allow for some degree of flexibility while still establishing minimum standards.

Enforcement of growth management requirements is likely to rely on litigation or the removal of funding (Calavita, 1997). But the majority of the objectives should be achievable through the establishment of minimum state standards infused with incentives that provide added funding and assistance for localities that comply or exceed the requirements.

State growth management statutes provide a potential vehicle through which the other ten land use tools can be organized and implemented. The statutes can make localities recognize affordable housing needs and plan to meet those needs. State growth management statutes can force localities to balance competing land use claims and prohibit exclusionary practices by organizing land use goals as one cohesive strategy. Localities need to fuse together their land use tools, frame their objectives through growth management principles, and strive to make affordable housing a real component of their land use approach. Growth management is where these tools can come together to address affordable housing concerns.

The tool belt for the other ten tools is: *STATE GROWTH MANAGEMENT PLAN*

REQUIRING:

- *PLANNING FOR HOUSING NEEDS*
- *FAIR SHARE REQUIREMENTS (MINIMUM STANDARDS, FUNDING BENEFITS FOR PROGRAMS WHICH EXCEED THESE MINIMUM REQUIREMENTS).*

As a tool belt for the various land use tools, growth management can organize and arrange the tools and then tie them tightly to local land use authority, both constricting what localities can do in terms of land use regulations and enabling localities with a variety of land use tools. If state growth management binds localities to minimum standards and requirements, localities will be more compelled to utilize the land use tools they have to achieve affordable housing goals.

Summary of Land Use Tools

Table 1 attempts to illustrate and summarize the land use tools discussed in this section. The various tools are interrelated and a need exists to integrate the tools. The tools must also be implemented by localities with housing affordability in mind. Table 1 demonstrates the overarching role that state growth management can assume by linking the tools, enabling localities with the tools, and requiring localities to address affordable housing through the tools.

TABLE 1

LOCAL TOOLS FOR AFFORDABLE HOUSING LAND USE POLICIES

LAND USE REGULATORY CATEGORIES	TOOL	TOOL	TOOL	TOOL
ZONING	High density Maximum Lot size	Elimination of Exclusionary Practices	Distinct Subdivision and Design Standards for Affordable Housing	Zoning for (Manufactured) Housing
EXACTIONS	Voluntary Inclusionary Zoning	Linkage Programs	Incentive Policies	Impact Fees- Housing Funds
PLANNING AND CERTAINTY	Streamlining the Permitting Process		Local Comprehensive Planning	

STATE GROWTH MANAGEMENT STATUTE

Section 4: Affordable Housing Policy in Action

This section will examine how California, Oregon, and the Portland Metropolitan Region have used the land use tools described in Table 1 to advance their affordable housing policies. California and Oregon were chosen as case studies due to their established and extended history of growth management practices as well as their advanced housing policies (Calavita, 1997; Abbott, Howe, and Adler, 1994). The Portland Metropolitan Region was selected to provide an interesting comparison and emphasize the need for affordable housing policy to occur at multiple jurisdictional levels.

California

Growth Management and Local Planning

California's affordable housing strategy is a model of local regulation within broad constitutional and statutory guidelines (Lowery and Ferguson, 1991). In 1971, California adopted growth management legislation that required counties to create zoning and subdivision ordinances and mandated that development proposals be consistent with the counties' general plans.

The legislation made provisions for affordable housing. California localities must have a housing element certified by the Department of Housing and Community Development (HDC). The HDC ensures that the element accommodates for a "fair share" of a region's population growth (Lowery and Ferguson, 1992). The HDC operates with the belief that there is an "obligation imposed by housing element law to zone for regional housing needs" (Burton, 1991). While the HDC certifies the plans for consistency, regional councils of governments are held responsible for setting a locality's "fair share" requirement.

California's overall approach to affordable housing integrates each of the ten land use tools mentioned to some extent. Most of the tools are implemented through the state's inclusionary zoning programs.

Zoning Tools

State laws aim to increase "compact development" and average densities. Through the review and certification process, California encourages localities to strongly zone for these types of development. The state has also enacted legislation that makes it unlawful for localities to place zoning restrictions on manufactured housing.

To encourage alternative zoning designations, localities can make special exceptions for multi-family and cluster development in return for affordable housing construction. Building code standards are also frequently reduced when a development includes affordable units. The state utilizes land use zoning tools to forbid localities from enacting exclusionary requirements and relies on the review authority of the HDC and regional councils to ensure compliance.

Exaction Tools

In California, inclusionary zoning is primarily accomplished through density bonuses. Developers are allowed to develop a greater number of units on a designated site than otherwise allowed if they "include" a certain percentage of affordable housing. California requires density bonuses of at least 25 percent and an additional concession or incentive to be given to a developer of five or more units if any of the following conditions are met:

- 20% of the development project is reserved for lower income households earning between 50-60% of the Area Median Income (AMI).

- 10% of the development project is reserved for households with very low incomes less than 50% Area Median Income (AMI).
- 50% of the development project is reserved for qualifying residents (for example, the elderly) (*Section 50079.5 of the Health and Safety Code*).

In addition to density bonuses, California offers other incentives including: the reduction of site development and zoning code standards, mixed use zoning approval, and fee waivers.

California imposes impact fees as a land use tool to promote adequate infrastructure and mitigate the effects of development. However these fees are not used to facilitate the development of affordable housing. Used most in the traditional sense, impact fees in California fund infrastructure and services. In fact studies indicate that the state's impact fees negatively affecting housing affordability. In Orange County, a survey revealed that in at least three cities impact fees exceeded \$20,000 per dwelling (Lurz and McLeister, 1990). This cost was partially attributed to the increasing housing costs of the areas. California's impact fees are not directed at impacts to housing demand. The state's numerous linkage programs address this issue.

Linkage programs exist in over a dozen jurisdictions throughout the state including San Diego, Palo Alto, Sacramento, and San Francisco. The linkage programs target nonresidential development, primarily office buildings. Linkage programs can require the developers of the projects to either construct affordable housing units on another site or pay a fee to assist in the construction of affordable housing. Most of the California communities charge developers "housing fees". San Francisco is considering to extend its current program and begin exacting housing fees from entertainment, hotels, and big box retail in addition to office buildings.

Certainty

The California Permit Streamlining Act was created to address the delays and inefficiencies present in the state's development review proceedings. The Act establishes time limits for review decisions and strongly encourages localities to create one-stop permitting locations.

Conclusion

California presents a good model for affordable housing policies. With a degree of flexibility and compromise, the state has succeeded in integrating many land use tools into a cohesive policy (Calavita, 1997). Unfortunately the state suffers from a perpetual affordable housing crisis. Intense in-migration in the 1970's and 1980's overwhelmed the housing market in California. The supply of housing was unable to satisfy the demand (Levy, 1991). The shortage of housing influenced prices upward. The lack of affordable housing initiated many of California's housing policies. Despite all of the state's efforts some of the most expensive communities in the nation are in California (AHBA, 2000). Severe housing shortages and high prices are still pervasive trends in the state's housing market.

Oregon

Growth Management and Local Planning

The Oregon state legislature enacted the Oregon Comprehensive Land Use Planning Program in 1973 that established the state's 19 statewide goals. The statute compels local governments to draft and implement comprehensive land use plans. The state's Land Conservation and Development Commission (LCDC) evaluates local plans for compliance with the statewide goals. In addition to the LCDC, a quasi-judicial board, the Land Use Board of Appeals (LUBA), was

created to deal with disputed land use cases and handle challenges to the plan's legitimacy (Abbott, Howe, and Adler, 1994).

Oregon's primary land use tool is the use of Urban Growth Boundaries (UGB). Urban growth boundaries are artificial lines drawn by the local or state government that indicate the land targeted for development. Land falling outside the line is then protected as rural land or open space through zoning and preservation ordinances. The UGB program is derived from the state's Goal 14 calling for orderly development (Ketcham and Siegel, 1991).

Goal 10 forms the basis for Oregon's affordable housing policy. This goal was enacted in 1974 and conveys a tone of "fair share" ideals.

Goal 10 (HOUSING)

To provide for the housing needs of the citizens of the state. Buildable lands and residential use shall be inventoried and plans shall encourage the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type, and density.

The local housing needs assessment included fair share considerations. Each locality is required to include the needs assessment as a component of their comprehensive plan. The assessment must include an inventory of buildable land and an extrapolation of estimated housing needs based on population growth and income measures (Abbott, Howe, and Adler, 1994). The state requires that localities provide adequate and accurate information to support the conclusions reached in their housing needs assessment.

Zoning Tools (Limiting Exclusion)

Oregon is clear in its interpretation of what constitutes "housing needs" and what is included in the definition of "needed housing". "Needed housing" includes multiple family and

attached single- family dwellings (i.e. townhouses and duplexes) and manufactured housing. Accordingly, Oregon requires all cities and counties with populations over 2,500 to permit manufactured housing on single lots (Abbott, Howe, and Adler, 1994).

If a locality denies or tries to exclude a development project of multiple family, attached single- family dwellings (i.e. townhouses and duplexes) or manufactured housing, sufficient legal evidence must be presented to justify the decision. Oregon is quite thorough in its state prohibition of exclusionary practices. LUBA upheld the state mandate in the case of *Seaman v. City of Durham* (1 LCDC 283 1978), holding that: “no government may by charter prohibit from all residential zones attached or detached single-family, multi-family owner or renter or manufactured housing”.

High Density Zoning Incentives

Increased densities are the core of Oregon’s affordable housing policy. The state has removed barriers and regulatory constraints that have traditionally prevented high-density development (Ketcham and Siegel, 1991). The LCDC encourages localities to zone for high densities. The UGB’s also contribute to the state’s high density policy, by requiring the area within the boundary to be zoned at an increased density. Oregon policy relies on the theory that the higher the density, the lower the land cost, the more affordable the development. High densities also function as the state’s primary incentive (Ketcham and Siegel, 1991). By concentrating on one land use tool, Oregon attempts to eliminate the unintended consequences of counteractive regulations.

Other Zoning and Exaction Tools

The Oregon approach to affordable housing does not quite fit the inclusionary zoning description. Since Oregon focuses on higher densities the policy tries to create market driven affordable housing, instead of trying to compensate for market failure (Abbott, Howe, and Adler, 1994). Accordingly, Oregon has not experimented much with linkage programs . The Oregon policy for affordable housing is deeply rooted and dependent on high densities in urban areas.

Oregon operates an established impact fee program referred to as System Development Charges. However, these fees do not promote affordable housing. The charges are targeted toward infrastructure and service needs, yet to be expanded as an affordable housing measure.

Certainty

Oregon initiated an effort to streamline the permitting process. The state created a “120-day” rule. The rule requires development proposals to be evaluated within 120 days after they are submitted. This has reduced permitting delays and accelerated the review process considerably (Abbott, Howe, and Adler, 1994).

Conclusion

Oregon’s affordable housing policy is characterized by the intensive planning and zoning it requires. The state policy relies on a limited number of land use tools. However, a small number of tools can create comprehensive housing policies. Oregon has established affordable housing as a statewide goal and provides a framework for localities to work toward that goal.

Yet, despite Oregon’s affordable housing efforts, all four of Oregon’s metropolitan areas are among the fourteen most expensive (the top seven percent) housing markets in the nation

(POGO, 1998). Only 27.6% of homes in the Portland area are affordable for the median income of the area (NHBA, 2000).

One theory postulates that the internal conflict between Statewide Goal 10 (affordable housing) and Goal 14 (orderly development) stifles housing affordability in Oregon. Since Goal 14 limits the amount of buildable land through UGB's, land speculation can occur and the price of land can increase (Ketcham and Siegel, 1991). If land prices are too high initially, Oregon's policy of making housing affordable through increased densities and decreased land costs will have little effect on the end price of housing. Rising land values threaten Oregon's primary affordable housing principle.

Portland Metropolitan Region

Under the guise of Oregon's growth management, the Portland Metropolitan Region has developed its own variation of affordable housing policy. The effort was undertaken due to the dramatic increase in the price of residential real estate and the severe shortage of low-cost housing experienced by the Portland area (Walsh, 2000). Estimates projected that over the next 20 years as many as 90,000 more units will be needed for very low income households. At the same time a 35 percent increase in population was also expected. Local officials saw collective action as necessary.

To manage the housing needs of the area and combat the severe housing crisis, the Metro Service District was created. The District included 24 cities, 3 counties (Clackamas, Multnomah, and Washington) and over 43 percent of the state's population.

The Metro Council was also created to act as the regional planning authority for the area. Delegated to the Metro Council was a unique type of legislative "functional" authority. The Metro

Council holds authority over air quality, water quality, transportation, solid waste, and the regional urban growth boundary (Ketcham and Siegel, 1991).

A Rule Addressing the Tools

Affordable housing is promoted through the Metro Housing Rule. The rule touches on several of the land use tools by requiring local plans to:

1. Provide adequate land zoned for needed housing types.
2. Ensure that land within the Metro Portland UGB may accommodate the region's projected population growth.
3. Provide greater certainty to the development process.
4. Reduce housing costs.

The Metro Council reviews the plans to certify that they meet Housing Rule criteria. In order to satisfy the rule localities must also ensure that:

- New development be mixed to include at least 50% multi-family or attached single family units.

TOOL #2: ELIMINATION OF EXCLUSIONARY PRACTICES

- Minimum target housing densities be established.

TOOL # 1: HIGH DENSITY AND MAXIMUM LOT-SIZES

The minimum density requirements are subjected to a sliding scale of 10-8-6 based on the urban character of the locality. Some discretion exists, but the acceptable densities are 10 units per buildable acre for the urban areas (Portland) and 8 or 6 for the more suburban locations (Ketcham and Siegel, 1991). One of the goals of the Housing Rule is to take the density/mix decision out of local hands and require the automatic approval of projects that would otherwise be seen as controversial.

1000 Friends of Oregon and the Home Builders Association of Metropolitan Portland (HBAMP) conducted a study in May of 1990 to assess the effects of the Metro Housing Rule. The study attempted to determine how well the region's "pro-housing" land use policies promoted the

development of affordable housing (Ketcham and Seigel, 1991). Findings indicate that the Metro Housing Rule encouraged more multi-family housing and single-family housing on smaller lots. The study also concluded that these results were achieved without compromising other land use objectives such as “orderly and efficient” urban growth.

Improvement in housing affordability was found in the study. However in constant dollars the median sale price of a single-family house in Portland increased 50% from 1988-1995. This is confounded further because Portland ranks at the top of most urban livability polls. These factors provide little closure as to the effectiveness of Portland’s Metro Housing Rule.

Section 5: Conclusions and Recommendations

Conclusions

Table 3 summarizes how California, Oregon, and the Portland Metropolitan Region have integrated the ten land use tools (if at all) into their affordable housing policies. The fact that California has succeeded in incorporating more of the tools than Oregon and Portland does not imply that California has a superior policy. Instead the differences reflect the diversity of state political, social, and economic climates and recognize the need for states and localities to determine their priorities when developing affordable housing policies. The state policies demonstrate that land use tools can be integrated in a variety of fashions.

The California, Oregon, and the Portland Metropolitan Region examples demonstrate that land use tools alone cannot completely address the complex issue of affordable housing. In all three examples, the integration of land use tools was unable to correct the overall housing affordability problem. The growth management initiatives did prove to be an effective vehicle for California and Oregon to organize local land use tools into a cohesive strategy. However, the strategies developed by the two states are considerably different. California utilizes a multitude of land use tools to encourage affordable housing. Oregon and the Portland Region promote affordable housing primarily through one tool: high density zoning, while trying to prevent other land use tools from conflicting with the affordable housing goals. The affordable housing policies of California, Oregon, and Portland provide good models for how to integrate land use tools to promote affordable housing.

TABLE 3

TOOLS	California	Oregon	Portland Metro Region
TOOL # 1: HIGH DENSITY AND MAXIMUM LOT-SIZES	Encourages localities to zone for “compact development” and high densities	Main strategy for increasing housing affordability, removes land use constraints on density	Metro Housing Rule: 10-8-6 units per buildable acre
TOOL #2: ELIMINATION OF EXCLUSIONARY PRACTICES	State law has made it illegal to place zoning restrictions on housing types (i.e. manufactured zoning) and uses alternative development approvals as incentives	“No government may by charter prohibit from all residential zones attached or detached single-family, multi-family owner or renter or manufactured housing.” -LUBA	See Oregon Tool # 2 New Development must be mixed to include at least 50% multi-family or single-family attached housing
TOOL # 3: DISTINCT SUBDIVISION AND DESIGN STANDARDS	Reduced building standards are often an incentive in inclusionary zoning programs	N/A	N/A
TOOL #4: ZONING FOR MANUFACTURED HOUSING	State law has made it illegal to place zoning restrictions on manufactured housing	“No government may by charter prohibit from all residential zones attached or detached single-family, multi-family owner or renter or manufactured housing.” -LUBA	See Oregon Tool # 4
TOOL #5: INCLUSIONARY ZONING	State Code 50079.5 provides for density bonuses of at least 25% for developments which meet inclusionary requirements (e.g. 20% lower income)	N/A	N/A
TOOL #6: INCENTIVE ZONING	Allows for many incentives mainly tied to inclusionary programs: density bonuses, site development and building code reductions, approval of mixed use zoning, and fee waivers	Density is the state’s main incentive.	Increased density.
TOOL #7: MODERATE IMPACT FEES AND A HOUSING FUND	Highly used, but usually not for the provision of affordable housing	Called System Development Charges not used for the provision of affordable housing	See Oregon Tool # 7: UGB’s do reduce fees by concentrating development
TOOL #8: LINKAGE PROGRAMS	Very common, over a dozen localities have created linkage-to-fee programs directed at affordable housing	N/A	N/A
TOOL # 9: STREAMLINING THE PERMITTING PROCESS	California Permit Streamlining Act sets time limits on review processes and encourages one-stop permitting	State law has created One-Stop Permitting and a 120-day rule for approval.	One-Stop Permitting 120-day Rule
TOOL # 10: LOCAL COMPREHENSIVE PLANS WITH A HOUSING ELEMENT	Required by the state’s growth management act. Must include: inventory of housing, coherent plan for housing anticipated population growth, and regional “fair share” considerations	Required by the state’s growth management statute. Goal 14 requires localities to plan for all “needed housing”.	Metro Council conducts Regional Level planning to coordinate local Comprehensive Plans
GROWTH MANAGEMENT	1971: Growth Management Act Localities required to plan and plans reviewed by HDC. Regional Council of Governments reviews Housing Elements, state encourages inclusionary zoning	1973: Oregon Comprehensive Land Use Planning Program 19 statewide goals, Localities required to plan and plans reviewed by the LCDC	See Oregon Growth Management.

However, California, Oregon and Portland still suffer from a serious lack of affordable housing. While the problem may not be as severe as it was prior to the implementation of affordable housing policies, the problem with affordable housing still exists.

A “compelling need” for affordable housing was evident in California and Oregon in the 1970’s and 1980’s (Calavita, Grimes, and Mallach, 1997; Ketchum, 1991). Both states initiated their growth management statutes during this time as well. The notion that policies and programs are enacted only after a compelling need has been demonstrated (Stegeman, 1991), suggests that the affordable housing policies of California and Oregon are to some extent reactive. Land use tools were used to regulate affordable housing after affordable housing became a major problem. However, the deep roots and pervasive nature of the states’ affordable housing problems may explain why land use tools alone are unable to eliminate the problem.

The cases also indicate that the state often must prod reluctant localities into action. By requiring localities to define and plan for housing needs, states can put affordable housing concerns on local policy agendas. Portland demonstrates how a solid state growth management statute like Oregon’s can stimulate innovative regional action if states are flexible and allow communities to engineer and experiment with the available land use tools. Unfortunately, both California and Oregon lack penalties for noncompliance. Considered a weakness of the policies, regulations “with stronger teeth” may enhance the effectiveness of the state policies (Calavita, Grimes, and Mallach, 1997; Ketchum, 1991).

California and Oregon both have integrated land use tools and employ state growth management techniques and yet still have problems with affordable housing. The case studies support the idea that integrated land use tools are preferable to isolated land use tools, but the studies also suggest that land use tools in general are not enough.

This paper set out to make an incremental contribution to affordable housing policy by addressing the role of land use tools. Land use tools are recognized as only one aspect of the plethora of issues pertaining to affordable housing. Regardless of how land use tools are directed toward affordable housing goals, an incremental improvement may be all that is achieved.

Land use regulations are deeply embedded in the political structure of the United States. This structure is unlikely to change significantly. Regardless of how negative the ramifications of land use regulations prove to be in terms of affordable housing, land use regulations are not going to be removed or altered completely. The basic structure of land use regulations is solidified in modern government policy. Recognizing that land use regulations are not going to disappear is a necessary revelation when trying to address affordable housing, especially from the land use perspective. Ironic as it may appear, the very regulations that are contributing to the problem of affordable housing are ultimately going to be same tools used to encourage the development of affordable housing.

Often when land use regulations bid up the cost of land and housing by controlling the type, amount, size, and location of new development, other land use tools of the very same nature are then applied to combat the problem. This is also reflective of the inherent conflict between growth management and affordable housing. Growth management's originates from a state desire to control, limit, and direct development, actions recognized as counterproductive for affordable housing. However, growth management that takes affordable housing into consideration can actually improve the affordable housing situation. The relationship between growth management and affordable housing is both contentious and complimentary, a relationship built on balance.

This paper shows that land use tools need to be integrated through state growth management policies. State growth management is the tool belt, organizing and collecting land use tools and then fastening the tools directly to local land use authority. The tool belt forces localities

to bear the weight of affordable housing concerns, while enabling the localities with a variety of land use tools to address the issue. State growth management can require localities to acknowledge the impacts that land use regulations can have on affordable housing, strapping localities with a state mandate to assume minimum housing goals and a fair share of affordable housing. However, at the same time, growth management empowers and enables localities by providing an array of land use tools to assist in the construction of local affordable housing policies that are feasible and reasonable.

Minimum standards at the state level need to be accomplished through the state growth management statutes. States should couple minimum requirements with a solid incentive system. Incentives, such as additional funding or protection from litigation, should be used to encourage localities to exceed the minimum standards and strive to use land use tools to improve the affordable housing situation even more dramatically.

Localities must also remember the role of the private sector. As states strive to create a balanced system of minimum standards and incentives, localities should create similar policies directed toward developers. Minimum standards and requirements can be achieved through comprehensive planning and zoning ordinances. Incentives can be accomplished through such policies as density bonuses, permitting priority, and tax breaks. The local incentives may encourage developers to exceed the minimum requirements and could increase the supply of affordable housing considerably.

Land use tools need to become a cohesive strategy at the state and local level. Growth management also needs to become integrated with the other policy areas concerned with affordable housing. Linking growth management with economic development, education policies, social welfare programs, tax policies, subsidy ventures, and public/private partnerships may be the next incremental step in creating policies that address the true complexity of affordable housing.

Growth management can serve as the tool belt where land use tools are integrated and then tied to local land use authority to prevent regulatory barriers to affordable housing. But as shown in the case studies, growth management cannot solve the entire affordability issue. Consumer preference and rate of in-migration are just a few of the factors that contribute to the cost of land and housing beyond the scope of land use control. Acknowledging the intervening roles of the private sector and basic economic trends is necessary if affordable housing policy is to be designed effectively. Land use regulations are limited in their ability to solve the affordable housing problem.

Growth management can encourage affordable housing development through the design and coordination of land use tools, but growth management is only one accessory localities need to grapple with the complexity of affordable housing policy.

Recommendations for Affordable Housing Policy

STATE GOVERNMENTS

- States legislatures should formulate a clear and comprehensive housing policy.
- State governments should amend or enact growth management statutes that require localities to plan for orderly development and address their housing needs, regardless of whether or not a current problem exists.
- States should create mandatory minimum standards through growth management statutes that bind localities to plan and implement affordable housing policies.
- State governments should create enforcement measures and penalties that force localities to meet minimum growth management requirements and standards.
- States that do not have a present “critical housing need” should not refrain from enacting affordable housing policies. If a state can proactively address affordable housing then an effort should be made to do so.
- States should eliminate fiscal incentives that discourage local governments from accommodating affordable housing.

STATE GROWTH MANAGEMENT STATUTES

- Growth management statutes should create coordinated and compatible state land use objectives, balancing competing claims.
- Growth management statutes should create minimum affordable housing standards for localities.
- Growth management should address affordable housing by integrating various land use tools into a cohesive strategy.
- Growth management should encourage or mandate localities to assume a “fair share” of regional housing needs.

LOCALITIES

- Localities should consider land use tools as one strategy to promote affordable housing.
- Localities should realistically assess their current and future affordable housing needs.
- Localities should integrate available land use tools to form affordable housing policies. (This is not to say that all tools should be applied in all localities.)
- Localities should integrate the tools necessary to develop a policy that meets the needs of the community. The mix of tools needs to be compatible, and exclusionary techniques avoided.
- Localities should adhere to state minimum standards, while working cooperatively with private sector concerns.

Affordable housing needs to be a consideration in the adoption and implementation of all government regulations, especially regulations pertaining to land use. Some argue that land use regulations are simply not designed to encourage the production of affordable housing (Lowery and Ferguson, 1991). This paper demonstrates that land use tools can be engineered and integrated into a land use strategy that, at a minimum, does not act as a regulatory barrier or contribute to the affordable housing problem.

Section 6: Literature Review

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